

103D CONGRESS  
1ST SESSION

# S. 1587

To revise and streamline the acquisition laws of the Federal Government,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 13), 1993

Mr. GLENN (for himself, Mr. BINGAMAN, Mr. LEVIN, Mr. NUNN, Mr. BUMPERS, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To revise and streamline the acquisition laws of the Federal  
Government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Federal Acquisition  
5 Streamlining Act of 1993”.

### 6 SEC. 2. TABLE OF CONTENTS.

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

## TITLE I—CONTRACT FORMATION

### Subtitle A—Competition Statutes

## PART I—ARMED SERVICES ACQUISITIONS

## SUBPART A—COMPETITION REQUIREMENTS

- Sec. 1001. References to Federal Acquisition Regulation.
- Sec. 1002. Exclusion of particular sources.
- Sec. 1003. Approval for use of noncompetitive procedures.
- Sec. 1004. Reference to head of a contracting activity.
- Sec. 1005. Task and delivery order contracts.

## SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1011. Source selection factors.
- Sec. 1012. Solicitation provision regarding evaluation of purchase options.
- Sec. 1013. Prompt notice of award.
- Sec. 1014. Post-award debriefings.
- Sec. 1015. Protest file.
- Sec. 1016. Award of costs and fees in agency settlement of protests.

## SUBPART C—KINDS OF CONTRACTS

- Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.
- Sec. 1022. Technical and conforming amendments.

## SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

- Sec. 1031. Encouragement of competition and cost savings.
- Sec. 1032. Repeal of requirement for annual report by advocates for competition.

## PART II—CIVILIAN AGENCY ACQUISITIONS

## SUBPART A—COMPETITION REQUIREMENTS

- Sec. 1051. References to Federal Acquisition Regulation.
- Sec. 1052. Exclusion of particular sources.
- Sec. 1053. Approval for use of noncompetitive procedures.
- Sec. 1054. Reference to head of a contracting activity.
- Sec. 1055. Task and delivery order contracts.

## SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1061. Solicitation, evaluation, and award.
- Sec. 1062. Solicitation provision regarding evaluation of purchase options.
- Sec. 1063. Prompt notice of award.
- Sec. 1064. Post-award debriefings.
- Sec. 1065. Protest file.
- Sec. 1066. Award of costs and fees in agency settlement of protests.

## SUBPART C—KINDS OF CONTRACTS

- Sec. 1071. Agency head determination regarding use of cost type or incentive contract.

## PART III—ACQUISITIONS GENERALLY

- Sec. 1091. Repeal of requirement for annual report on competition.

## **Subtitle B—Truth in Negotiations**

### **PART I—ARMED SERVICES ACQUISITIONS**

- Sec. 1201. Stabilization of dollar threshold of applicability.
- Sec. 1202. Exceptions to cost or pricing data requirements.
- Sec. 1203. Limitation on authority to require a submission not otherwise required.
- Sec. 1204. Additional special rules for commercial items.
- Sec. 1205. Right of United States to examine contractor records.
- Sec. 1206. Required regulations.
- Sec. 1207. Consistency of time references.
- Sec. 1208. Repeal of superseded provision.

### **PART II—CIVILIAN AGENCY ACQUISITIONS**

- Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.
- Sec. 1252. Repeal of obsolete provision.

## **Subtitle C—Research and Development**

- Sec. 1301. Delegation of contracting authority.
- Sec. 1302. Research projects.
- Sec. 1303. Elimination of inflexible terminology regarding coordination and communication of defense research activities.

## **Subtitle D—Procurement Protests**

### **PART I—PROTESTS TO THE COMPTROLLER GENERAL**

- Sec. 1401. Protest defined.
- Sec. 1402. Review of protests and effect on contracts pending decision.
- Sec. 1403. Decisions on protests.
- Sec. 1404. Regulations.

### **PART II—PROTESTS IN THE FEDERAL COURTS**

- Sec. 1421. Nonexclusivity of remedies.
- Sec. 1422. Jurisdiction of the United States Court of Federal Claims.

### **PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING**

- Sec. 1431. Revocation of delegations of procurement authority.
- Sec. 1432. Authority of the General Services Administration Board of Contract Appeals.
- Sec. 1433. Periods for certain actions.
- Sec. 1434. Dismissals of protests.
- Sec. 1435. Award of costs.
- Sec. 1436. Dismissal agreements.
- Sec. 1437. Jurisdiction of district courts.
- Sec. 1438. Matters to be covered in regulations.
- Sec. 1439. Definitions.
- Sec. 1440. Oversight of acquisition of automatic data processing equipment by Federal agencies.

## **Subtitle E—Definitions and Other Matters**

## PART I—ARMED SERVICES ACQUISITIONS

- Sec. 1501. Definitions.
- Sec. 1502. Delegation of procurement functions.
- Sec. 1503. Determinations and decisions.
- Sec. 1504. Undefined contractual actions: restrictions.
- Sec. 1505. Production special tooling and production special test equipment: contract terms and conditions.
- Sec. 1506. Regulations for bids.
- Sec. 1507. Repeal of executed requirement relating to certificate of independent price determination in certain Department of Defense contract solicitations.

## PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 1551. Definitions.
- Sec. 1552. Delegation of procurement functions.
- Sec. 1553. Determinations and decisions.
- Sec. 1554. Undefined contractual actions: restrictions.
- Sec. 1555. Repeal of amendments to uncodified title.

# TITLE II—CONTRACT ADMINISTRATION

## Subtitle A—Contract Payment

### PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2001. Contract financing.
- Sec. 2002. Contracts: vouchering procedures.

### PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2051. Contract financing.

## Subtitle B—Cost Principles

### PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2101. Allowable contract costs.
- Sec. 2102. Contract profit controls during emergency periods.

### PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2151. Allowable contract costs.

### PART III—ACQUISITIONS GENERALLY

- Sec. 2191. Travel expenses of government contractors.

## Subtitle C—Audit and Access to Records

### PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2201. Consolidation and revision of authority to examine records of contractors.

### PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2251. Authority to examine records of contractors.



### **Subtitle D—Cost Accounting Standards**

Sec. 2301. Repeal of obsolete deadline regarding procedural regulations for the Cost Accounting Standards Board.

### **Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality**

#### **PART I—ARMED SERVICES ACQUISITIONS**

Sec. 2401. Procurement of critical aircraft and ship spare parts; quality control.

Sec. 2402. Contractor guarantees regarding weapon systems.

Sec. 2403. Repeal of requirement for complete delivery of subsistence supplies at specific place upon inspection.

#### **PART II—ACQUISITIONS GENERALLY**

Sec. 2451. Section 3737 of the Revised Statutes: expansion of authority to prohibit setoffs against assignees; reorganization of section; revision of obsolete provisions.

Sec. 2452. Repeal of requirement for deposit of contracts with GAO.

### **Subtitle F—Claims and Disputes**

#### **PART I—ARMED SERVICES ACQUISITIONS**

Sec. 2501. Certification of contract claims.

#### **PART II—ACQUISITIONS GENERALLY**

Sec. 2551. Concurrent jurisdiction of United States district courts under the Little Tucker Act.

Sec. 2552. Contract Disputes Act improvements.

## **TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES**

### **Subtitle A—Major Systems Statutes**

Sec. 3001. Requirement for independent cost estimates and manpower estimates before development or production.

Sec. 3002. Enhanced program stability.

Sec. 3003. Repeal of requirement for Defense Enterprise Programs.

Sec. 3004. Repeal of requirement for competitive prototyping in major programs.

Sec. 3005. Repeal of requirement for competitive alternative sources in major programs.

### **Subtitle B—Testing Statutes**

Sec. 3011. Repeal of testing requirement for wheeled or tracked vehicles.

Sec. 3012. Major systems and munitions programs: survivability and lethality testing.

Sec. 3013. Operational test and evaluation of defense acquisition programs.

Sec. 3014. Low-rate initial production of new systems.

### **Subtitle C—Service Specific Laws**

- Sec. 3021. Industrial mobilization.
- Sec. 3022. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness.
- Sec. 3023. Procurement for experimental purposes.
- Sec. 3024. Repeal of authority for procurement of production equipment.
- Sec. 3025. Availability of Department of Defense samples, drawings, information, equipment, materials, and certain services.
- Sec. 3026. Repeal of duplicative general procurement authority.
- Sec. 3027. Repeal of authority to delegate the procurement of Army rations.
- Sec. 3028. Repeal of authority to purchase exceptional subsistence supplies without advertising.
- Sec. 3029. Repeal of authority to obtain assistance of United States mapping agencies.
- Sec. 3030. Repeal of authority to reclaim unserviceable ammunition.
- Sec. 3031. Gratuitous services of officers of certain reserve components.
- Sec. 3032. Civil Reserve Air Fleet.
- Sec. 3033. Repeal of Navy authority regarding research and development, procurement, and construction of guided missiles.
- Sec. 3034. Exchange of scientific personnel.
- Sec. 3035. Repeal of authority for Secretary of the Navy to provide temporary relief for contractors and contractor employees from losses caused by enemy action.
- Sec. 3036. Repeal of authority for Secretary of the Navy to sell degaussing equipment.
- Sec. 3037. Repeal of authority for alternative use of appropriations for construction or conversion of vessels.
- Sec. 3038. Repeal of authority for conversion of combatant and auxiliary naval vessels.
- Sec. 3039. Construction of combatant and escort vessels and assignment of vessel projects.
- Sec. 3040. Repeal of requirement for estimates in connection with bids on construction of naval vessels.
- Sec. 3041. Repeal of requirement for construction of vessels on Pacific coast.
- Sec. 3042. Fitness of naval vessels: examination; striking unfit vessels; disposal.
- Sec. 3043. Repeal of policy on constructing combatant vessels.
- Sec. 3044. Naval salvage facilities.

#### **Subtitle D—Department of Defense Commercial and Industrial Activities**

- Sec. 3051. Factories and arsenals: manufacture at.
- Sec. 3052. Accounting requirement for contracted advisory and assistance services.

#### **Subtitle E—Fuel- and Energy-Related Laws**

- Sec. 3061. Liquid fuels and natural gas: contracts for storage, handling, or distribution.
- Sec. 3062. Acquisition of petroleum and natural gas: authority to waive procedures.

#### **Subtitle F—Fiscal Statutes**

- Sec. 3071. Disbursement of funds of military department to cover obligations of another agency of Department of Defense.

#### **Subtitle G—Miscellaneous**

- Sec. 3081. Obligation of funds: limitation.
- Sec. 3082. Repeal of provisions for the encouragement of aviation.
- Sec. 3083. Repeal of requirements regarding product evaluation activities.
- Sec. 3084. Repeal of price adjustment authority and purchase authority relating to the procurement of milk.
- Sec. 3085. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.

## **TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS**

### **Subtitle A—Simplified Acquisition Threshold**

#### **PART I—ESTABLISHMENT OF THRESHOLD**

- Sec. 4001. Simplified acquisition threshold.

#### **PART II—SIMPLIFICATION OF PROCEDURES**

- Sec. 4011. Simplified acquisition procedures.
- Sec. 4012. Small business reservation.
- Sec. 4013. Procurement notice.

#### **PART III—INAPPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD**

##### **SUBPART A—GENERALLY**

- Sec. 4021. Inapplicability of future enacted procurement laws to contracts not exceeding the simplified acquisition threshold.

##### **SUBPART B—ARMED SERVICES ACQUISITIONS**

- Sec. 4031. Inapplicability of requirement for contract clause regarding contingent fees.
- Sec. 4032. Inapplicability of prohibition on limiting subcontractor direct sales to the United States.
- Sec. 4033. Inapplicability of authority to examine books and records of contractors.
- Sec. 4034. Inapplicability of requirement to identify suppliers and sources of supplies.
- Sec. 4035. Inapplicability of prohibition against doing business with certain offerors or contractors.
- Sec. 4036. Inapplicability of preference for use of United States vessels for transporting supplies of the Armed Forces.

##### **SUBPART C—CIVILIAN AGENCY ACQUISITIONS**

- Sec. 4041. Inapplicability of requirement for contract clause regarding contingent fees.
- Sec. 4042. Inapplicability of prohibition on limiting subcontractor direct sales to the United States.
- Sec. 4043. Inapplicability of authority to examine books and records of contractors.



## SUBPART D—ACQUISITIONS GENERALLY

- Sec. 4051. Inapplicability of limitation on use of funds to influence certain Federal actions.
- Sec. 4052. Inapplicability of requirement for contract clause relating to kick-backs.
- Sec. 4053. Inapplicability of the Miller Act to contracts below the simplified acquisition threshold.
- Sec. 4054. Inapplicability of Contract Work Hours and Safety Standards Act.
- Sec. 4055. Inapplicability of the Drug-Free Workplace Act of 1988.
- Sec. 4056. Inapplicability of a requirement in the Merchant Marine Act, 1936, to ship on American-flag commercial vessels.
- Sec. 4057. Inapplicability of certain procurement integrity requirements.

## PART IV—CONFORMING AMENDMENTS

- Sec. 4071. Armed services acquisitions.
- Sec. 4072. Civilian agency acquisitions.
- Sec. 4073. Office of Federal Procurement Policy Act.
- Sec. 4074. Small Business Act.

## PART V—REVISION OF REGULATIONS

- Sec. 4081. Revision required.

**Subtitle B—Socioeconomic and Small Business Laws**

- Sec. 4101. Armed services acquisitions.
- Sec. 4102. Acquisitions generally.
- Sec. 4103. Direct contracting with small businesses.

**Subtitle C—Miscellaneous Acquisition Laws**

- Sec. 4151. Repeal of obsolete laws relating to procurement of naval aircraft and components.
- Sec. 4152. Revision and codification of prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
- Sec. 4153. Restriction on use of noncompetitive procedures for procurement from a particular source.

**TITLE V—INTELLECTUAL PROPERTY****Subtitle A—Technology Transfer**

- Sec. 5001. Copyright protection for computer programs of the Federal Government.
- Sec. 5002. Use of copyrighted works of the Federal Government.
- Sec. 5003. Distribution of royalties received by Federal agencies.
- Sec. 5004. Exception to prohibition on copyright protection for works of the Federal Government.

**Subtitle B—Government Use of Private Patents, Copyrights, and Trade Secrets**

- Sec. 5011. Government use or manufacture of a patented invention.
- Sec. 5012. Department of Defense acquisition of intellectual property rights.

**TITLE VI—STANDARDS OF CONDUCT**



**Subtitle A—Ethics Provisions**

- Sec. 6001. Amendments to Office of Federal Procurement Policy Act.
- Sec. 6002. Amendments to title 18, United States Code.
- Sec. 6003. Repeal of superseded and obsolete laws.
- Sec. 6004. Implementation.

**Subtitle B—Additional Amendments**

- Sec. 6051. Contracting functions performed by Federal personnel.
- Sec. 6052. Repeal of executed requirement for study and report.
- Sec. 6053. Waiting period for significant changes proposed for acquisition regulations.

**TITLE VII—DEFENSE TRADE AND COOPERATION**

- Sec. 7001. Purchases of foreign goods.
- Sec. 7002. International cooperative agreements.
- Sec. 7003. Acquisition, cross-servicing agreements, and standardization.

**TITLE VIII—COMMERCIAL ITEMS**

- Sec. 8001. Definitions.
- Sec. 8002. Preference for acquisition of commercial items and nondevelopmental items.
- Sec. 8003. Acquisition of commercial items.
- Sec. 8004. Class waiver of applicability of certain laws.
- Sec. 8005. Inapplicability of certain provisions of law.
- Sec. 8006. Flexible deadlines for submission of offers of commercial items.
- Sec. 8007. Advocate for Acquisition of Commercial and Nondevelopmental Items.
- Sec. 8008. Provisions not affected.
- Sec. 8009. Comptroller General review of Federal Government use of market research.

**TITLE IX—EFFECTIVE DATE**

- Sec. 9001. Effective date.

**1 TITLE I—CONTRACT FORMATION**

**2 Subtitle A—Competition Statutes**

**3 PART I—ARMED SERVICES ACQUISITIONS**

**4 Subpart A—Competition Requirements**

**5 SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGU-**  
**6 LATION.**

**7 Section 2304 of title 10, United States Code, is**  
**8 amended—**

1           (1) in subsection (a)(1)(A), by striking out  
2       “modifications” and all that follows through “note)”  
3       and inserting in lieu thereof “Federal Acquisition  
4       Regulation”; and

5           (2) in subsection (g)(1), by striking out “regu-  
6       lations modified” and all that follows through  
7       “note)” and inserting in lieu thereof “Federal Ac-  
8       quisition Regulation”.

9   **SEC. 1002. EXCLUSION OF PARTICULAR SOURCES.**

10       Section 2304(b) of title 10, United States Code, is  
11   amended—

12           (1) by redesignating paragraphs (2) and (3) as  
13       paragraphs (3) and (4), respectively;

14           (2) by inserting after paragraph (1) the follow-  
15       ing new paragraph (2):

16       “(2) The determination required of the head of an  
17       agency in paragraph (1) may not be made for a class of  
18       purchases or contracts.”; and

19           (3) in paragraph (4), as redesignated by para-  
20       graph (1), by striking out “paragraphs (1) and (2)”  
21       and inserting in lieu thereof “paragraphs (1) and  
22       (3)”.

1 **SEC. 1003. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**  
2 **CEDURES.**

3 Section 2304(f)(1)(B)(i) of title 10, United States  
4 Code, is amended by inserting before the semicolon at the  
5 end the following: “or by an official referred to in clause  
6 (ii), (iii), or (iv)”.

7 **SEC. 1004. REFERENCE TO HEAD OF A CONTRACTING AC-**  
8 **TIVITY.**

9 Section 2304(f) of title 10, United States Code, is  
10 amended—

11 (1) in paragraph (1)(B)(ii)—

12 (A) by striking out “head of the procuring  
13 activity” and inserting in lieu thereof “head of  
14 the contracting activity”; and

15 (B) by striking out “head of the procuring  
16 activity’s” and inserting in lieu thereof “head of  
17 the contracting activity’s”; and

18 (2) in paragraph (6)(A), by striking out “head  
19 of a procuring activity” and inserting in lieu thereof  
20 “head of a contracting activity”.

21 **SEC. 1005. TASK AND DELIVERY ORDER CONTRACTS.**

22 (a) **AUTHORITY.—**

23 (1) **IN GENERAL.—**Chapter 137 of title 10,  
24 United States Code, is amended by inserting after  
25 section 2304 the following new section:

1 **“§ 2304a. Task and delivery order contracts**

2       “(a) **AUTHORITY TO AWARD.**—Subject to the re-  
3 quirements of this section, the head of an agency may  
4 enter into a contract that does not procure or specify a  
5 firm quantity of supplies or services (other than a mini-  
6 mum or maximum quantity) and that provides for the is-  
7 suance of delivery orders or task orders during the speci-  
8 fied period of the contract. The head of an agency may  
9 enter into such a contract only under the authority of this  
10 section.

11       “(b) **LIMITATION ON CONTRACT PERIOD.**—The pe-  
12 riod of a contract referred to in subsection (a), including  
13 all periods of extensions of the contract under options,  
14 modifications, or otherwise, may not exceed 3 years, ex-  
15 cept that, when multiple contracts are awarded under sub-  
16 section (c)(4) pursuant to the same solicitation, the period  
17 of each such contract may exceed 3 years but may not  
18 exceed 5 years.

19       “(c) **AWARD PROCEDURES.**—(1) The head of an  
20 agency may use procedures other than competitive proce-  
21 dures to enter into a contract referred to in subsection  
22 (a) only if an exception in subsection (c) of section 2304  
23 of this title applies to the contract and the use of such  
24 procedures is approved in accordance with subsection (f)  
25 of such section.



1       “(2) The notice required by section 18 of the Office  
2 of Federal Procurement Policy Act (41 U.S.C. 416) and  
3 section 8(e) of the Small Business Act (15 U.S.C. 637(e))  
4 shall reasonably and fairly describe the general scope,  
5 magnitude, and duration of the proposed contract in a  
6 manner that would reasonably enable a potential offeror  
7 to decide whether to request the solicitation and consider  
8 submitting an offer.

9       “(3) The solicitation shall include the following:

10       “(A) The period of the contract, including the  
11 number of options to extend the contract and the pe-  
12 riod for which the contract may be extended under  
13 each option, if any.

14       “(B) The maximum quantity or dollar value of  
15 supplies or services to be procured under the con-  
16 tract.

17       “(C) A statement of work, specifications, or  
18 other description that reasonably describes the gen-  
19 eral scope, nature, complexity, and purposes of the  
20 supplies or services to be procured under the con-  
21 tract.

22       “(4)(A) The head of an agency may, on the basis of  
23 one solicitation, award separate contracts under this sec-  
24 tion for the same or similar supplies or services to two

1 or more sources if the solicitation states that the head of  
2 the agency has the option to do so.

3 “(B) In any solicitation for an advisory and assist-  
4 ance services contract for a period in excess of 1 year,  
5 or for an amount (including all options) in excess of  
6 \$10,000,000, the head of an agency shall include a state-  
7 ment that the head of the agency reserves the option—

8 “(i) to award separate contracts under subpara-  
9 graph (A); or

10 “(ii) to award only one contract if the head of  
11 the agency determines in writing that only one of  
12 the offerers is capable of providing the services re-  
13 quired at the level of quality required.

14 “(5) A contract referred to in subsection (a) shall  
15 contain the same information that is required by para-  
16 graph (3) to be included in the solicitation of offers for  
17 that contract.

18 “(d) ORDERS.—(1) The following actions are not re-  
19 quired for a delivery order or task order issued under a  
20 contract entered into in accordance with this section:

21 “(A) A separate notice for such order under  
22 section 18 of the Office of Federal Procurement Pol-  
23 icy Act (41 U.S.C. 416) or section 8(e) of the Small  
24 Business Act (15 U.S.C. 637(e)).

1           “(B) Except as provided in paragraph (2), a  
2 competition (or a waiver of competition approved in  
3 accordance with section 2304(f) of this title) that is  
4 separate from that used for entering into the con-  
5 tract.

6           “(2)(A) When multiple contracts are awarded under  
7 subsection (c)(4), each delivery order or task order issued  
8 under such contracts shall be competed among all of the  
9 contractors awarded such contracts unless the contracting  
10 officer determines in writing that—

11           “(i) the agency’s need for the supplies or serv-  
12 ices ordered is of such unusual urgency that com-  
13 petition would result in unacceptable delays in fulfill-  
14 ing the agency’s needs;

15           “(ii) the supplies or services ordered are so  
16 unique or highly specialized that only one such con-  
17 tractor is capable of providing the supplies or serv-  
18 ices required at the level of quality required; or

19           “(iii) the delivery order or task order should be  
20 issued on a sole-source basis in the interest of econ-  
21 omy and efficiency because it is a logical follow-on  
22 to a delivery order or task order already issued on  
23 a competitive basis.

24           “(B) When a delivery order or task order is competed  
25 pursuant to subparagraph (A), the order shall include a

1 statement of work that clearly specifies all tasks to be per-  
2 formed under the order.

3 “(3) A protest is not authorized in connection with  
4 the issuance, proposed issuance, or competing of a delivery  
5 order or task order except for a protest on the ground  
6 that the order increases the scope, period, or maximum  
7 value of the contract under which the order is issued.

8 “(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM  
9 VALUE OF CONTRACT.—(1) A delivery order or task order  
10 may not increase the scope, period, or maximum value of  
11 the contract under which the order is issued. The scope,  
12 period, or maximum value of the contract may be in-  
13 creased only by modification of the contract.

14 “(2) Unless use of procedures other than competitive  
15 procedures is authorized by an exception in subsection (c)  
16 of section 2304 of this title and approved in accordance  
17 with subsection (f) of such section, competitive procedures  
18 shall be used for making such a modification.

19 “(3) Notice regarding the modification shall be pro-  
20 vided in accordance with section 18 of the Office of Fed-  
21 eral Procurement Policy Act (41 U.S.C. 416) and section  
22 8(e) of the Small Business Act (15 U.S.C. 637(e)).

23 “(f) TASK ORDER OMBUDSMAN.—Each head of an  
24 agency who awards multiple contracts under subsection  
25 (c)(4) shall appoint or designate a task order ombudsman



1 who shall be responsible for reviewing complaints from the  
 2 contractors on such contracts and ensuring that task or-  
 3 ders are issued on a competitive basis when required under  
 4 subsection (d)(2). The task order ombudsman shall be a  
 5 senior agency official who is independent of the contract-  
 6 ing officer for the contracts and may be the agency's com-  
 7 petition advocate.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-  
 9 tions at the beginning of such chapter is amended  
 10 by inserting after the item relating to section 2304  
 11 the following new item:

“2304a. Task and delivery order contracts.”.

12 (b) REPEAL OF SUPERSEDED PROVISION.—Section  
 13 2304 of title 10, United States Code, is amended by strik-  
 14 ing out subsection (j).

15 (c) CONFORMING AMENDMENT FOR PROFESSIONAL  
 16 AND TECHNICAL SERVICES.—Section 2331 of title 10,  
 17 United States Code, is amended by striking out subsection  
 18 (c).

19 **Subpart B—Planning, Solicitation, Evaluation, and**  
 20 **Award**

21 **SEC. 1011. SOURCE SELECTION FACTORS.**

22 Section 2305(a) of title 10, United States Code, is  
 23 amended—

24 (1) in paragraph (2)—

1 (A) in subparagraph (A)(i), by striking out  
2 “nonprice-related factors)” and inserting in lieu  
3 thereof “nonprice-related factors and  
4 subfactors)”;

5 (B) in subparagraph (B)(ii), by striking  
6 out subclause (I) and inserting in lieu thereof  
7 the following:

8 “(I) either a statement that the pro-  
9 posals are intended to be evaluated with,  
10 and award made after, discussions with the  
11 offerors, or a statement that the proposals  
12 are intended to be evaluated, and award  
13 made, without discussions with the offerors  
14 (other than discussions conducted for the  
15 purpose of minor clarification) unless dis-  
16 cussions are determined to be necessary;  
17 and”;

18 (2) by striking out paragraph (3) and inserting  
19 in lieu thereof the following:

20 “(3)(A) In prescribing the evaluation factors to be  
21 included in each solicitation for competitive proposals, the  
22 head of an agency—

23 “(i) shall clearly establish the relative impor-  
24 tance assigned to the evaluation factors and  
25 subfactors, including the quality of the product or

1 services to be provided (including technical capabil-  
2 ity, management capability, and prior experience of  
3 the offeror);

4 “(ii) shall include cost or price to the Govern-  
5 ment as an evaluation factor that must be consid-  
6 ered in the evaluation of proposals; and

7 “(iii) shall disclose to offerors whether all eval-  
8 uation factors other than price or cost, when com-  
9 bined, are—

10 “(I) significantly more important than  
11 price or cost;

12 “(II) approximately equal in importance to  
13 price or cost; or

14 “(III) significantly less important than  
15 price or cost.

16 “(B) Nothing in this paragraph prohibits an agency  
17 from—

18 “(i) providing additional information in a solici-  
19 tation, including numeric weights for all evaluation  
20 factors; or

21 “(ii) stating in a solicitation that award will be  
22 made to the offeror that meets the solicitation’s  
23 mandatory requirements at the lowest price or  
24 cost.”.

1   **SEC. 1012. SOLICITATION PROVISION REGARDING EVALUA-**  
2                           **TION OF PURCHASE OPTIONS.**

3           (a) **OPTIONS FOR ADDITIONAL PURCHASES.**—Sub-  
4   section (a) of section 2305 of title 10, United States Code,  
5   as amended by section 1011, is further amended by adding  
6   at the end the following new paragraph:

7           “(4) The head of an agency, in issuing a solicitation  
8   for a contract to be awarded using sealed bid procedures,  
9   may not include in such solicitation a clause providing for  
10   the evaluation of prices under the contract for options to  
11   purchase additional supplies or services under the contract  
12   unless the head of the agency has determined that there  
13   is a reasonable likelihood that the options will be exer-  
14   cised.”.

15          (b) **REPEAL OF SUPERSEDED PROVISION.**—Section  
16   2301(a) of such title is amended—

17               (1) by striking out paragraph (7);

18               (2) by inserting “and” at the end of paragraph

19               (5); and

20               (3) by striking out “; and” at the end of para-  
21   graph (6) and inserting in lieu thereof a period.

22   **SEC. 1013. PROMPT NOTICE OF AWARD.**

23          (a) **SEALED BID PROCEDURES.**—Section 2305(b)(3)  
24   of title 10, United States Code, is amended by adding at  
25   the end the following: “Within 3 days after the date of  
26   contract award, the head of the agency shall notify all



1 offerors not awarded the contract that the contract has  
2 been awarded.”.

3 (b) COMPETITIVE PROPOSALS PROCEDURES.—Sec-  
4 tion 2305(b)(4)(B) of title 10, United States Code, is  
5 amended in the second sentence by striking out “shall  
6 promptly notify” and inserting in lieu thereof “, within  
7 3 days after the date of contract award, shall notify”.

8 **SEC. 1014. POST-AWARD DEBRIEFINGS.**

9 Section 2305(b) of title 10, United States Code, is  
10 amended—

11 (1) by redesignating paragraph (5) as para-  
12 graph (6); and

13 (2) by inserting after paragraph (4) the follow-  
14 ing new paragraph (5):

15 “(5)(A) When a contract is awarded by an agency  
16 on the basis of competitive proposals, an unsuccessful  
17 offeror, upon written request received by the agency within  
18 7 days after the date of contract award, shall be debriefed  
19 and furnished the basis for the selection decision and con-  
20 tract award. An employee of the agency shall debrief the  
21 offeror within 7 days after receipt of the request by the  
22 agency.

23 “(B) The debriefing shall provide the offeror with—

24 “(i) the agency’s evaluation of the significant  
25 weak or deficient factors in the offeror’s offer;

1           “(ii) the overall evaluated cost of the offer of  
2           the contractor awarded the contract and the overall  
3           evaluated cost of the offer of the debriefed offeror;

4           “(iii) the overall ranking of all offers and the  
5           total technical and cost scores of all offers;

6           “(iv) a summary of the rationale for the award;

7           “(v) in the case of a proposal that incorporates  
8           equipment that is a commercial item, the make and  
9           model of the item incorporated in the offer of the  
10          contractor awarded the contract; and

11          “(vi) reasonable responses to questions posed by  
12          the debriefed offeror as to whether source selection  
13          procedures set forth in the solicitation, applicable  
14          regulations, and other applicable authorities were  
15          followed by the agency.

16          “(C) The debriefing may not include point-by-point  
17          comparisons of the debriefed offeror’s offer with other of-  
18          fers and may not disclose any information that is exempt  
19          from disclosure under section 552 of title 5, including in-  
20          formation relating to—

21               “(i) trade secrets;

22               “(ii) privileged or confidential manufacturing  
23               processes and techniques; and

24               “(iii) commercial and financial information that  
25               is privileged or confidential, including cost break-

1       downs, profit, indirect cost rates, and similar infor-  
2       mation.

3       “(D) Each solicitation for competitive proposals shall  
4       include a statement that information described in subpara-  
5       graph (B) may be disclosed in post-award debriefings.

6       “(E) If, within one year after the date of the contract  
7       award and as a result of a successful procurement protest  
8       or otherwise, the agency seeks to fulfill the requirement  
9       under the contract either on the basis of a new solicitation  
10      of offers or on the basis of the best and final offers consid-  
11      ered in the awarding of that contract, the agency shall  
12      provide each such offeror with—

13           “(i) all information provided in debriefings  
14           under this paragraph regarding the offer of the con-  
15           tractor awarded the contract; and

16           “(ii) all comparable information with respect to  
17           the original offerors.

18       “(F) The contracting officer shall include a summary  
19       of the debriefing in the contract file.”.

20   **SEC. 1015. PROTEST FILE.**

21       Section 2305 of title 10, United States Code, is  
22       amended by adding at the end the following:

23       “(e)(1) If, in the case of a solicitation for a contract  
24       issued by, or an award or proposed award of a contract  
25       by, the head of an agency, a protest is filed pursuant to

1 the procedures in subchapter V of chapter 35 of title 31  
2 and an actual or prospective offeror so requests, a file of  
3 the protest shall be established by the contracting activity  
4 and reasonable access shall be provided to actual or pro-  
5 spective offerors.

6 “(2) Information exempt from disclosure under the  
7 section 552 of title 5 may be redacted in a file established  
8 pursuant to paragraph (1) unless an applicable protective  
9 order provides otherwise.

10 “(3) Regulations implementing this subsection shall  
11 be consistent with the regulations regarding the prepara-  
12 tion and submission of an agency’s protest file (the so-  
13 called ‘rule 4 file’) for protests to the General Services  
14 Board of Contract Appeals under the Contract Disputes  
15 Act of 1978 (41 U.S.C. 601 et seq.).”.

16 **SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**  
17 **MENT OF PROTESTS.**

18 Section 2305 of title 10, United States Code, as  
19 amended by section 1015, is further amended by adding  
20 at the end the following new subsection:

21 “(f) If, in connection with a protest, the head of an  
22 agency determines that a solicitation, proposed award, or  
23 award does not satisfy the requirements of law or regula-  
24 tion, the head of the agency may take any action set out



1 in subparagraphs (A) through (F) of section 3554(b)(1)  
2 of title 31.”.

3                   **Subpart C—Kinds of Contracts**

4 **SEC. 1021. SECRETARIAL DETERMINATION REGARDING**  
5 **USE OF COST TYPE OR INCENTIVE CON-**  
6 **TRACT.**

7           Subsection (c) of section 2306 of title 10, United  
8 States Code, is repealed.

9 **SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.**

10       (a) **REPEAL OF UNNECESSARY CROSS REF-**  
11 **ERENCE.**—Subsection (f) of section 2306 of title 10, Unit-  
12 ed States Code, is repealed.

13       (b) **CONFORMING AMENDMENT.**—Such section is  
14 amended by redesignating subsections (d), (e), (g), and  
15 (h) as subsections (c), (d), (e), and (f), respectively.

16       (c) **NEUTERIZATION OF REFERENCE.**—Subsection  
17 (e)(1) of such section, as redesignated by subsection (b),  
18 is amended in the matter above clause (i) by striking out  
19 “whenever he finds” and inserting in lieu thereof “when-  
20 ever the head of the agency finds”.

1       **Subpart D—Miscellaneous Provisions for the**  
2                   **Encouragement of Competition**

3   **SEC. 1031. ENCOURAGEMENT OF COMPETITION AND COST**  
4                   **SAVINGS.**

5       (a) **TRANSFER.**—The text of section 2317 of title 10,  
6 United States Code—

7               (1) is amended—

8                   (A) by striking out “The Secretary of De-  
9 fense” and inserting in lieu thereof “(c) EN-  
10 COURAGEMENT OF COMPETITION AND COST  
11 SAVINGS.—The Secretary”; and

12                  (B) by striking out “contracts covered by  
13 this chapter” and inserting in lieu thereof “con-  
14 tracts of the Department of Defense”; and

15               (2) is transferred to section 1701 of title 10,  
16 United States Code, and inserted at the end of such  
17 section.

18       (b) **CLERICAL AMENDMENTS.**—Chapter 137 of title  
19 10, United States Code, is amended—

20               (1) by striking out the section heading of sec-  
21 tion 2317; and

22               (2) in the table of sections at the beginning of  
23 such chapter, by striking out the item relating to  
24 section 2317.

1 **SEC. 1032. REPEAL OF REQUIREMENT FOR ANNUAL RE-**  
2 **PORT BY ADVOCATES FOR COMPETITION.**

3 Subsection (c) of section 2318 of title 10, United  
4 States Code, is repealed.

5 **PART II—CIVILIAN AGENCY ACQUISITIONS**

6 **Subpart A—Competition Requirements**

7 **SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGU-**  
8 **LATION.**

9 Section 303 of the Federal Property and Administra-  
10 tive Services Act of 1949 (41 U.S.C. 253) is amended—

11 (1) in subsection (a)(1)(A), by striking out  
12 “modifications” and all that follows through “of  
13 1984” and inserting in lieu thereof “Federal Acqui-  
14 sition Regulation”; and

15 (2) in subsection (g)(1), by striking out “regu-  
16 lations modified” and all that follows through “of  
17 1984,” and inserting in lieu thereof “Federal Acqui-  
18 sition Regulation”.

19 **SEC. 1052. EXCLUSION OF PARTICULAR SOURCES.**

20 Section 303(b) of the Federal Property and Adminis-  
21 trative Services Act of 1949 (41 U.S.C. 253(b)) is  
22 amended—

23 (1) by redesignating paragraphs (2) and (3) as  
24 paragraphs (3) and (4), respectively;

25 (2) by inserting after paragraph (1) the follow-  
26 ing new paragraph (2):

1 “(2) The determination required of the agency head  
2 in paragraph (1) may not be made for a class of purchases  
3 or contracts.”; and

4 (3) in paragraph (4), as redesignated by para-  
5 graph (1), by striking out “paragraphs (1) and (2)”  
6 and inserting in lieu thereof “paragraphs (1) and  
7 (3)”.

8 **SEC. 1053. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**  
9 **CEDURES.**

10 Section 303(f)(1)(B)(i) of the Federal Property and  
11 Administrative Services Act of 1949 (41 U.S.C.  
12 253(f)(1)(B)(i)) is amended by inserting before the semi-  
13 colon at the end the following: “or by an official referred  
14 to in clause (ii), (iii), or (iv)”.

15 **SEC. 1054. REFERENCE TO HEAD OF A CONTRACTING AC-**  
16 **TIVITY.**

17 Section 303(f)(1)(B)(ii) of the Federal Property and  
18 Administrative Services Act of 1949 (41 U.S.C.  
19 253(f)(1)(B)(ii)) is amended by striking out “head of the  
20 procuring activity” and inserting in lieu thereof “head of  
21 the contracting activity”.

22 **SEC. 1055. TASK AND DELIVERY ORDER CONTRACTS.**

23 (a) **AUTHORITY.**—Title III of the Federal Property  
24 and Administrative Services Act of 1949 (41 U.S.C. 251



1 et seq.) is amended by inserting after section 303G the  
2 following new section:

3 “TASK AND DELIVERY ORDER CONTRACTS

4 “SEC. 303H. (a) AUTHORITY TO AWARD.—Subject  
5 to the requirements of this section, an agency head may  
6 enter into a contract that does not procure or specify a  
7 firm quantity of supplies or services (other than a mini-  
8 mum or maximum quantity) and that provides for the is-  
9 suance of delivery orders or task orders during the speci-  
10 fied period of the contract. The agency head may enter  
11 into such a contract only under the authority of this sec-  
12 tion.

13 “(b) CONTRACT PERIOD NOT TO EXCEED 3  
14 YEARS.—The period of a contract referred to in sub-  
15 section (a), including all periods of extensions of the con-  
16 tract under options, modifications, or otherwise, may not  
17 exceed 3 years, except that, when multiple contracts are  
18 awarded under subsection (c)(4) pursuant to the same so-  
19 licitation, the period of each such contract may exceed 3  
20 years but may not exceed 5 years.

21 “(c) AWARD PROCEDURES.—(1) An agency head may  
22 use procedures other than competitive procedures to enter  
23 into a contract referred to in subsection (a) only if an ex-  
24 ception in subsection (c) of section 303 applies to the con-  
25 tract and the use of such procedures is approved in ac-  
26 cordance with subsection (f) of such section.

1       “(2) The notice required by section 18 of the Office  
2 of Federal Procurement Policy Act (41 U.S.C. 416) and  
3 section 8(e) of the Small Business Act (15 U.S.C. 637(e))  
4 shall reasonably and fairly describe the general scope,  
5 magnitude, and duration of the proposed contract in a  
6 manner that would reasonably enable a potential offeror  
7 to decide whether to request the solicitation and consider  
8 submitting an offer.

9       “(3) The solicitation shall include the following:

10           “(A) The period of the contract, including the  
11 number of options to extend the contract and the pe-  
12 riod for which the contract may be extended under  
13 each option, if any.

14           “(B) The maximum quantity or dollar value of  
15 supplies or services to be procured under the con-  
16 tract.

17           “(C) A statement of work, specifications, or  
18 other description that reasonably describes the gen-  
19 eral scope, nature, complexity, and purposes of the  
20 supplies or services to be procured under the con-  
21 tract.

22       “(4)(A) An agency head may, on the basis of one so-  
23 licitation, award separate contracts under this section for  
24 the same or similar supplies or services to two or more

1 sources if the solicitation states that the agency head has  
2 the option to do so.

3 “(B) In any solicitation for an advisory and assist-  
4 ance services contract for a period in excess of 1 year,  
5 or for an amount (including all options) in excess of  
6 \$10,000,000, an agency head shall—

7 “(i) provide for a multiple award under sub-  
8 paragraph (A); and

9 “(ii) include a statement that the agency head  
10 may also elect to award only one contract if the  
11 agency head determines in writing that only one of  
12 the offerers is capable of providing the services re-  
13 quired at the level of quality required.

14 “(5) A contract referred to in subsection (a) shall  
15 contain the same information that is required by para-  
16 graph (3) to be included in the solicitation of offers for  
17 that contract.

18 “(d) ORDERS.—(1) The following actions are not re-  
19 quired for a delivery order or task order issued under a  
20 contract entered into in accordance with this section:

21 “(A) A separate notice for such order under  
22 section 18 of the Office of Federal Procurement Pol-  
23 icy Act (41 U.S.C. 416) or section 8(e) of the Small  
24 Business Act (15 U.S.C. 637(e)).

1           “(B) Except as provided in paragraph (2), a  
2           competition (or a waiver of competition approved in  
3           accordance with section 303(f)) that is separate  
4           from that used for entering into the contract.

5           “(2)(A) When multiple contracts are awarded under  
6           subsection (c)(4), each delivery order or task order issued  
7           under such contracts shall be competed among all of the  
8           contractors awarded such contracts unless the contracting  
9           officer determines in writing that—

10           “(i) the agency’s need for the supplies or serv-  
11           ices ordered is of such unusual urgency that com-  
12           petition would result in unacceptable delays in fulfill-  
13           ing the agency’s needs;

14           “(ii) the supplies or services ordered are so  
15           unique or highly specialized that only one such con-  
16           tractor is capable of providing the supplies or serv-  
17           ices required at the level of quality required; or

18           “(iii) the delivery order or task order should be  
19           issued on a sole-source basis in the interest of econ-  
20           omy and efficiency because it is a logical follow-on  
21           to a delivery order or task order already issued on  
22           a competitive basis.

23           “(B) When a delivery order or task order is competed  
24           pursuant to subparagraph (A), the order shall include a



1 statement of work that clearly specifies all tasks to be per-  
2 formed under the order.

3 “(3) A protest is not authorized in connection with  
4 the issuance, proposed issuance, or competing of a delivery  
5 order or task order except for a protest on the ground  
6 that the order increases the scope, period, or maximum  
7 value of the contract under which the order is issued.

8 “(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM  
9 VALUE OF CONTRACT.—(1) A delivery order or task order  
10 may not increase the scope, period, or maximum value of  
11 the contract under which the order is issued. The scope,  
12 period, or maximum value of the contract may be in-  
13 creased only by modification of the contract.

14 “(2) Unless use of procedures other than competitive  
15 procedures is authorized by an exception in subsection (c)  
16 of section 303 and approved in accordance with subsection  
17 (f) of such section, competitive procedures shall be used  
18 for making such a modification.

19 “(3) Notice regarding the modification shall be pro-  
20 vided in accordance with section 18 of the Office of Fed-  
21 eral Procurement Policy Act (41 U.S.C. 416) and section  
22 8(e) of the Small Business Act (15 U.S.C. 637(e)).

23 “(f) TASK ORDER OMBUDSMAN.—Each agency head  
24 who awards multiple contracts under subsection (c)(4)  
25 shall appoint or designate a task order ombudsman who

1 shall be responsible for reviewing complaints from the con-  
 2 tractors on such contracts and ensuring that task orders  
 3 are issued on a competitive basis when required under sub-  
 4 section (d)(2). The task order ombudsman shall be a sen-  
 5 ior agency official who is independent of the contracting  
 6 officer for the contracts and may be the agency's competi-  
 7 tion advocate.”.

8 (b) CLERICAL AMENDMENT.—The table of contents  
 9 in the first section is amended by inserting after the item  
 10 relating to section 303G the following new item:

“Sec. 303H. Task and delivery order contracts.”.

11 **Subpart B—Planning, Solicitation, Evaluation, and**  
 12 **Award**

13 **SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.**

14 (a) CONTENT OF SOLICITATION.—Section 303A of  
 15 the Federal Property and Administrative Services Act of  
 16 1949 (41 U.S.C. 253a) is amended—

17 (1) in subsection (b)(1)(A)—

18 (A) by inserting “and significant  
 19 subfactors” after “all significant factors”; and

20 (B) by striking out “(including price)” and  
 21 inserting “(including cost or price, cost-related  
 22 or price-related factors and subfactors, and  
 23 noncost-related or nonprice-related factors and  
 24 subfactors)”;

1           (2) in subsection (b)(1)(B), by inserting “and  
2   subfactors” after “factors”;

3           (3) in subsection (b)(2)(B), by striking out  
4   clause (i) and inserting in lieu thereof the following:

5                   “(i) either a statement that the pro-  
6                   posals are intended to be evaluated with,  
7                   and award made after, discussions with the  
8                   offerors, or a statement that the proposals  
9                   are intended to be evaluated, and award  
10                  made, without discussions with the offerors  
11                  (other than discussions conducted for the  
12                  purpose of minor clarification) unless dis-  
13                  cussions are determined to be necessary;  
14                  and”;

15          (4) by adding at the end the following new sub-  
16   section:

17          “(c)(1) In prescribing the evaluation factors to be in-  
18   cluded in each solicitation for competitive proposals, an  
19   agency head—

20               “(A) shall clearly establish the relative impor-  
21   tance assigned to the evaluation factors and  
22   subfactors, including the quality of the product or  
23   services to be provided (including technical capabil-  
24   ity, management capability, and prior experience of  
25   the offeror);

1           “(B) shall include cost or price to the Govern-  
2           ment as an evaluation factor that must be consid-  
3           ered in the evaluation of proposals; and

4           “(C) shall disclose to offerors whether all eval-  
5           uation factors other than price or cost, when com-  
6           bined, are—

7                   “(i) significantly more important than  
8           price or cost;

9                   “(ii) approximately equal in importance to  
10          price or cost; or

11                  “(iii) significantly less important than  
12          price or cost.

13          “(2) Nothing in this subsection prohibits an agency  
14          from—

15                  “(A) providing additional information in a solici-  
16          tation, including numeric weights for all evaluation  
17          factors; or

18                  “(B) stating in a solicitation that award will be  
19          made to the offeror that meets the solicitation’s  
20          mandatory requirements at the lowest price or  
21          cost.”.

22          (b) EVALUATION AND AWARD.—Section 303B of the  
23          Federal Property and Administrative Services Act of 1949  
24          (41 U.S.C. 253b) is amended—



(1) in subsection (a), by inserting “, and award a contract,” after “competitive proposals”;

(2) in subsection (c), by inserting “in accordance with subsection (a)” in the second sentence after “shall evaluate the bids”; and

(3) in subsection (d)—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) An agency head shall evaluate competitive proposals in accordance with subsection (a) and may award a contract—

“(A) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

“(B) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), provided that, as required by section 303A(b)(2)(B)(i), the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.”; and

1 (B) by striking out paragraphs (2) and (3)  
2 and by redesignating paragraph (4) as para-  
3 graph (2).

4 (c) APPLICABILITY.—

5 (1) IN GENERAL.—Except as provided in para-  
6 graph (2), the amendments made by this section  
7 shall apply to—

8 (A) solicitations for sealed bids or competi-  
9 tive proposals issued after the end of the 180-  
10 day period beginning on the date of the enact-  
11 ment of this Act; and

12 (B) contracts awarded pursuant to those  
13 solicitations.

14 (2) AUTHORITY TO APPLY AMENDMENTS  
15 EARLY.—The head of an executive agency may apply  
16 the amendments made by this section to solicitations  
17 issued before the end of the period referred to in  
18 paragraph (1). The head of the executive agency  
19 shall publish in the Federal Register notice of any  
20 such earlier date of application at least 10 days be-  
21 fore that date.

22 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**  
23 **TION OF PURCHASE OPTIONS.**

24 Section 303A of the Federal Property and Adminis-  
25 trative Services Act of 1949 (41 U.S.C. 253a), as amend-

1 ed by section 1061(a)(4), is further amended by adding  
2 at the end the following new subsection:

3 “(d) An agency head, in issuing a solicitation for a  
4 contract to be awarded using sealed bid procedures, may  
5 not include in such solicitation a clause providing for the  
6 evaluation of prices under the contract for options to pur-  
7 chase additional supplies or services under the contract  
8 unless the agency head has determined that there is a rea-  
9 sonable likelihood that the options will be exercised.”.

10 **SEC. 1063. PROMPT NOTICE OF AWARD.**

11 (a) SEALED BID PROCEDURES.—Subsection (c) of  
12 section 303B of the Federal Property and Administrative  
13 Services Act of 1949 (41 U.S.C. 253b) is amended by add-  
14 ing at the end the following: “Within 3 days after the date  
15 of contract award, the agency head shall notify offerors  
16 not awarded the contract that the contract has been  
17 awarded.”.

18 (b) COMPETITIVE PROPOSALS PROCEDURES.—Para-  
19 graph (2) of section 303B(d) of the Federal Property and  
20 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),  
21 as redesignated by section 1061(b)(3)(B), is amended in  
22 the second sentence by striking out “shall promptly no-  
23 tify” and inserting in lieu thereof “, within 3 days after  
24 the date of contract award, shall notify”.

1 **SEC. 1064. POST-AWARD DEBRIEFINGS.**

2 Section 303B of the Federal Property and Adminis-  
3 trative Services Act of 1949 (41 U.S.C. 253b) is  
4 amended—

5 (1) by redesignating subsections (e) and (f) as  
6 subsections (f) and (g), respectively; and

7 (2) by inserting after subsection (d) the follow-  
8 ing new subsection (e):

9 “(e)(1) When a contract is awarded by an executive  
10 agency on the basis of competitive proposals, an unsuc-  
11 cessful offeror, upon written request received by the execu-  
12 tive agency within 7 days after the date of contract award,  
13 shall be debriefed and furnished the basis for the selection  
14 decision and contract award. An employee of the executive  
15 agency shall debrief the offeror within 7 days after receipt  
16 of the request by the executive agency.

17 “(2) The debriefing shall provide the offeror with—

18 “(A) the executive agency’s evaluation of the  
19 significant weak or deficient factors in the offeror’s  
20 offer;

21 “(B) the overall evaluated cost of the offer of  
22 the contractor awarded the contract and the overall  
23 evaluated cost of the offer of the debriefed offeror;

24 “(C) the overall ranking of all offers and the  
25 total technical and cost scores of all offers;

26 “(D) a summary of the rationale for the award;



1           “(E) in the case of a proposal that incorporates  
2       equipment that is a commercial item, the make and  
3       model of the item incorporated in the offer of the  
4       contractor awarded the contract; and

5           “(F) reasonable responses to questions posed by  
6       the debriefed offeror as to whether source selection  
7       procedures set forth in the solicitation, applicable  
8       regulations, and other applicable authorities were  
9       followed by the executive agency.

10       “(3) The debriefing may not include point-by-point  
11      comparisons of the debriefed offeror’s offer with other of-  
12      fers and may not disclose any information that is exempt  
13      from disclosure under section 552 of title 5, United States  
14      Code, including information relating to—

15           “(A) trade secrets;

16           “(B) privileged or confidential manufacturing  
17      processes and techniques; and

18           “(C) commercial and financial information that  
19      is privileged or confidential, including cost break-  
20      downs, profit, indirect cost rates, and similar infor-  
21      mation.

22       “(4) Each solicitation for competitive proposals shall  
23      include a statement that information described in para-  
24      graph (2) may be disclosed in post-award debriefings.

1       “(5) If, within one year after the date of the contract  
2   award and as a result of a successful procurement protest  
3   or otherwise, the executive agency seeks to fulfill the re-  
4   quirement under the contract either on the basis of a new  
5   solicitation of offers or on the basis of the best and final  
6   offers considered in the awarding of that contract, the  
7   agency head shall provide each such offeror with—

8               “(A) all information provided in debriefings  
9       under this paragraph regarding the offer of the con-  
10      tractor awarded the contract; and

11              “(B) all comparable information with respect to  
12      the original offerors.

13       “(6) The contracting officer shall include a summary  
14   of the debriefing in the contract file.”.

15   **SEC. 1065. PROTEST FILE.**

16       Section 303B of the Federal Property and Adminis-  
17   trative Services Act of 1949 (41 U.S.C. 253b), as amend-  
18   ed by section 1064(1), is further amended by adding at  
19   the end the following:

20       “(h)(1) If, in the case of a solicitation for a contract  
21   issued by, or an award or proposed award of a contract  
22   by, an agency head, a protest is filed pursuant to the pro-  
23   cedures in subchapter V of chapter 35 of title 31, United  
24   States Code, and an actual or prospective offeror so re-  
25   quests, a file of the protest shall be established by the con-

1 tracting activity and reasonable access shall be provided  
2 to actual or prospective offerors.

3 “(2) Information exempt from disclosure under sec-  
4 tion 552 of title 5, United States Code, may be redacted  
5 in a file established pursuant to paragraph (1) unless an  
6 applicable protective order provides otherwise.

7 “(3) Regulations implementing this subsection shall  
8 be consistent with the regulations regarding the prepara-  
9 tion and submission of an agency’s protest file (the so-  
10 called ‘rule 4 file’) for protests to the General Services  
11 Board of Contract Appeals under the Contract Disputes  
12 Act of 1978 (41 U.S.C. 601 et seq.).”.

13 **SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLE-**  
14 **MENT OF PROTESTS.**

15 Section 303B of the Federal Property and Adminis-  
16 trative Services Act of 1949 (41 U.S.C. 253b), as amend-  
17 ed by section 1066, is further amended by adding at the  
18 end the following new subsection:

19 “(i) If, in connection with a protest, an agency head  
20 determines that a solicitation, proposed award, or award  
21 does not satisfy the requirements of law or regulation, the  
22 agency head may take any action set out in subparagraphs  
23 (A) through (F) of section 3554(b)(1) of title 31, United  
24 States Code.”.

1                   **Subpart C—Kinds of Contracts**

2   **SEC. 1071. AGENCY HEAD DETERMINATION REGARDING**  
 3                   **USE OF COST TYPE OR INCENTIVE CON-**  
 4                   **TRACT.**

5           Section 304(b) of the Federal Property and Adminis-  
 6   trative Services Act of 1949 (41 U.S.C. 254(b)) is amend-  
 7   ed by striking out the second sentence.

8                   **PART III—ACQUISITIONS GENERALLY**

9   **SEC. 1091. REPEAL OF REQUIREMENT FOR ANNUAL RE-**  
 10                   **PORT ON COMPETITION.**

11          Section 23 of the Office of Federal Procurement Pol-  
 12   icy Act (41 U.S.C. 419) is repealed.

13   **Subtitle B—Truth in Negotiations**

14                   **PART I—ARMED SERVICES ACQUISITIONS**

15   **SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-**  
 16                   **PLICABILITY.**

17          Section 2306a(a)(1)(A) of title 10, United States  
 18   Code, is amended—

19                   (1) in clause (i), by striking out “and before  
 20   January 1, 1996,”; and

21                   (2) in clause (ii), by striking out “or after De-  
 22   cember 31, 1995,”.

23   **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**  
 24                   **QUIREMENTS.**

25          Section 2306a(b) of title 10, United States Code, is  
 26   amended to read as follows:



1       “(b) EXCEPTIONS.—(1) This section need not be ap-  
2       plied to a contract or subcontract—

3               “(A) for which the price agreed upon is based  
4       on—

5                       “(i) adequate price competition;

6                       “(ii) established catalog or market prices  
7               of commercial items or of services regularly  
8               used for other than Government purposes, as  
9               the case may be, that are sold in substantial  
10              quantities to the general public; or

11                      “(iii) prices set by law or regulation; or

12              “(B) in an exceptional case when the head of  
13       the agency determines that the requirements of this  
14       section may be waived and states in writing the rea-  
15       sons for such determination.

16       “(2) This section need not be applied to a modifica-  
17       tion of a contract or subcontract if—

18               “(A) the contract or subcontract being modified  
19       is one to which this section need not be applied by  
20       reason of clause (i) or (ii) of paragraph (1)(A); and

21               “(B) the modification would not change the  
22       contract or subcontract, as the case may be, from a  
23       contract or subcontract for the acquisition of a com-  
24       mercial item to a contract or subcontract for the ac-  
25       quisition of a noncommercial item.”.

1   **SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUB-**  
2                   **MISSION NOT OTHERWISE REQUIRED.**

3       Section 2306a(c) of title 10, United States Code, is  
4 amended by striking out “by subsection (a), such data  
5 may nevertheless be required to be submitted by the head  
6 of the agency if” and inserting in lieu thereof “by reason  
7 of subsection (b), submission of such data may not be re-  
8 quired unless”.

9   **SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL**  
10                   **ITEMS.**

11       Section 2306a of title 10, United States Code, is  
12 amended—

13               (1) by redesignating subsections (d), (e), (f),  
14       and (g) as subsections (e), (f), (g), and (i), respec-  
15       tively; and

16               (2) by inserting after subsection (c) the follow-  
17       ing new subsection (d):

18       “(d) **ADDITIONAL EXCEPTION PROVISIONS REGARD-**  
19 **ING COMMERCIAL ITEMS.**—(1) To the maximum extent  
20 practicable, the head of an agency shall—

21               “(A) conduct procurements of commercial items  
22       on a competitive basis; and

23               “(B) exercise the authority provided in sub-  
24       section (b)(1)(A) to exempt the contracts and sub-  
25       contracts under such procurements from the require-  
26       ments of subsection (a).

1       “(2) In any case in which it is not practicable to con-  
2     duct a procurement of a commercial item on a competitive  
3     basis and the procurement is not covered by an exception  
4     in subsection (b), the contracting officer may nonetheless  
5     exempt a contract or subcontract under the procurement  
6     from the requirements of subsection (a) if—

7               “(A) in accordance with regulations implement-  
8     ing this paragraph, the offeror, contractor, or sub-  
9     contractor, as the case may be, provides the con-  
10    tracting officer with information on the price  
11    charged by such offeror, contractor, or subcontractor  
12    for the same or similar products in the commercial  
13    marketplace; and

14              “(B) the contracting officer determines in writ-  
15    ing that the information provided is adequate for  
16    evaluating the reasonableness of the price of the con-  
17    tract or subcontract.

18       “(3)(A) The Government shall be entitled to a reduc-  
19    tion in price and the return of any overpayment, with in-  
20    terest, if an offeror, contractor, or subcontractor provides  
21    materially inaccurate or misleading information to the  
22    contracting officer pursuant to paragraph (2).

23       “(B) Nothing in subparagraph (A) is intended to pre-  
24    clude the head of an agency from negotiating any contract  
25    clause that provides additional price adjustment authority

1 for the protection of the Government's interest in specific  
2 types of contracts, including multiple ordering agree-  
3 ments.

4       “(4)(A) The head of an agency shall have the right  
5 to examine all information provided by an offeror, contrac-  
6 tor, or subcontractor pursuant to paragraph (2) and all  
7 books and records of such offeror, contractor, or sub-  
8 contractor that directly relate to such information in order  
9 to determine whether such information is materially inac-  
10 curate or misleading.

11       “(B) The right under subparagraph (A) shall expire  
12 3 years after the date of award of the contract, or 3 years  
13 after the date of the modification of the contract, with  
14 respect to which the information was provided.”.

15 **SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CON-**  
16 **TRACTOR RECORDS.**

17       Section 2306a of title 10, United States Code, is  
18 amended by striking out subsection (g), as redesignated  
19 by section 1204(1), and inserting in lieu thereof the fol-  
20 lowing:

21       “(g) **RIGHT OF UNITED STATES TO EXAMINE CON-**  
22 **TRACTOR RECORDS.**—For the purpose of evaluating the  
23 accuracy, completeness, and currency of cost or pricing  
24 data required to be submitted by this section, the head



1 of an agency shall have the rights provided by section  
2 2313 of this title.”.

3 **SEC. 1206. REQUIRED REGULATIONS.**

4 Section 2306a of title 10, United States Code, as  
5 amended by sections 1204 and 1205, is further amended  
6 by inserting after subsection (g) the following new sub-  
7 section:

8 “(h) **REQUIRED REGULATIONS.**—(1) The Secretary  
9 of Defense shall prescribe regulations identifying the type  
10 of procurements for which contracting officers should con-  
11 sider requiring the submission of certified cost or pricing  
12 data under this section.

13 “(2) The Secretary also shall prescribe regulations  
14 concerning the types of information that offerors must  
15 submit for a contracting officer to consider in determining  
16 whether the price of a procurement to the Government is  
17 fair and reasonable when certified cost or pricing data are  
18 not required to be submitted under this section because  
19 the price of the procurement to the United States is not  
20 expected to exceed \$500,000. Such information, at a mini-  
21 mum, shall include appropriate information on the prices  
22 at which such offeror has previously sold the same or simi-  
23 lar products.”.

1 **SEC. 1207. CONSISTENCY OF TIME REFERENCES.**

2 Section 2306a of title 10, United States Code, as  
3 amended by section 1204, is further amended—

4 (1) in subparagraphs (A)(ii) and (B)(ii) of sub-  
5 section (e)(4), by inserting “or, if applicable consist-  
6 ent with paragraph (1)(B), another date agreed  
7 upon between the parties” after “(or price of the  
8 modification)”; and

9 (2) in subsection (i), by inserting “or, if appli-  
10 cable consistent with subsection (d)(1)(B), another  
11 date agreed upon between the parties” after “(or the  
12 price of a contract modification)”.

13 **SEC. 1208. REPEAL OF SUPERSEDED PROVISION.**

14 Subsection (c) of section 803 of Public Law 101-510  
15 (10 U.S.C. 2306a note) is repealed.

16 **PART II—CIVILIAN AGENCY ACQUISITIONS**

17 **SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO**  
18 **ENSURE UNIFORM TREATMENT OF COST OR**  
19 **PRICING DATA.**

20 (a) IN GENERAL.—Title III of the Federal Property  
21 and Administrative Services Act of 1949 (41 U.S.C. 251  
22 et seq.) is amended—

23 (1) in section 304, by striking out subsection  
24 (d); and

25 (2) by inserting after section 304 the following  
26 new section:

1 “COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

2 “SEC. 304A. (a) REQUIRED COST OR PRICING DATA  
3 AND CERTIFICATION.—(1) An agency head shall require  
4 offerors, contractors, and subcontractors to make cost or  
5 pricing data available as follows:

6 “(A) An offeror for a prime contract under this  
7 title to be entered into using procedures other than  
8 sealed-bid procedures shall be required to submit  
9 cost or pricing data before the award of a contract  
10 if—

11 “(i) in the case of a prime contract entered  
12 into after the date of the enactment of the Fed-  
13 eral Acquisition Streamlining Act of 1993, the  
14 price of the contract to the United States is ex-  
15 pected to exceed \$500,000; and

16 “(ii) in the case of a prime contract en-  
17 tered into on or before the date of the enact-  
18 ment of the Federal Acquisition Streamlining  
19 Act of 1993, the price of the contract to the  
20 United States is expected to exceed \$100,000.

21 “(B) The contractor for a prime contract under  
22 this chapter shall be required to submit cost or pric-  
23 ing data before the pricing of a change or modifica-  
24 tion to the contract if—

1           “(i) in the case of a change or modification  
2           made to a prime contract referred to in sub-  
3           paragraph (A)(i), the price adjustment is ex-  
4           pected to exceed \$500,000;

5           “(ii) in the case of a change or modifica-  
6           tion made to a prime contract that was entered  
7           into on or before the date of the enactment of  
8           the Federal Acquisition Streamlining Act of  
9           1993, and that has been modified pursuant to  
10          paragraph (6), the price adjustment is expected  
11          to exceed \$500,000; and

12          “(iii) in the case of a change or modifica-  
13          tion not covered by clause (i) or (ii), the price  
14          adjustment is expected to exceed \$100,000.

15          “(C) An offeror for a subcontract (at any tier)  
16          of a contract under this title shall be required to  
17          submit cost or pricing data before the award of the  
18          subcontract if the prime contractor and each higher-  
19          tier subcontractor have been required to make avail-  
20          able cost or pricing data under this section and—

21               “(i) in the case of a subcontract under a  
22               prime contract referred to in subparagraph  
23               (A)(i), the price of the subcontract is expected  
24               to exceed \$500,000;



1           “(ii) in the case of a subcontract entered  
2           into under a prime contract that was entered  
3           into on or before the date of the enactment of  
4           the Federal Acquisition Streamlining Act of  
5           1993, and that has been modified pursuant to  
6           paragraph (6), the price of the subcontract is  
7           expected to exceed \$500,000; and

8           “(iii) in the case of a subcontract not cov-  
9           ered by clause (i) or (ii), the price of the sub-  
10          contract is expected to exceed \$100,000.

11          “(D) The subcontractor for a subcontract cov-  
12          ered by subparagraph (C) shall be required to sub-  
13          mit cost or pricing data before the pricing of a  
14          change or modification to the subcontract if—

15               “(i) in the case of a change or modification  
16               to a subcontract referred to in subparagraph  
17               (C)(i) or (C)(ii), the price adjustment is ex-  
18               pected to exceed \$500,000; and

19               “(ii) in the case of a change or modifica-  
20               tion to a subcontract referred to in subpara-  
21               graph (C)(iii), the price adjustment is expected  
22               to exceed \$100,000.

23          “(2) A person required, as an offeror, contractor, or  
24          subcontractor, to submit cost or pricing data under para-  
25          graph (1) (or required by the agency head concerned to

1 submit such data under subsection (c)) shall be required  
2 to certify that, to the best of the person's knowledge and  
3 belief, the cost or pricing data submitted are accurate,  
4 complete, and current.

5 “(3) Cost or pricing data required to be submitted  
6 under paragraph (1) (or under subsection (c)), and a cer-  
7 tification required to be submitted under paragraph (2),  
8 shall be submitted—

9 “(A) in the case of a submission by a prime  
10 contractor (or an offeror for a prime contract), to  
11 the contracting officer for the contract (or to a des-  
12 ignated representative of the contracting officer); or

13 “(B) in the case of a submission by a sub-  
14 contractor (or an offeror for a subcontract), to the  
15 prime contractor.

16 “(4) Except as provided under subsection (b), this  
17 section applies to contracts entered into by an agency head  
18 on behalf of a foreign government.

19 “(5) For purposes of paragraph (1)(C), a contractor  
20 or subcontractor granted a waiver under subsection (b)(2)  
21 shall be considered as having been required to make avail-  
22 able cost or pricing data under this section.

23 “(6)(A) Upon the request of a contractor that was  
24 required to submit cost or pricing data under paragraph  
25 (1) in connection with a prime contract entered into on

1 or before the date of the enactment of the Federal Acquisi-  
2 tion Streamlining Act of 1993, the agency head that en-  
3 tered into such contract shall modify the contract to re-  
4 flect subparagraphs (B)(ii) and (C)(ii) of paragraph (1).  
5 All such modifications shall be made without requiring  
6 consideration.

7 “(B) An agency head is not required to modify a con-  
8 tract under subparagraph (A) if that agency head deter-  
9 mines that the submission of cost or pricing data with re-  
10 spect to that contract should be required under subsection  
11 (c).

12 “(b) EXCEPTIONS.—(1) This section need not be ap-  
13 plied to a contract or subcontract—

14 “(A) for which the price agreed upon is based  
15 on—

16 “(i) adequate price competition;

17 “(ii) established catalog or market prices  
18 of commercial items or of services regularly  
19 used for other than Government purposes, as  
20 the case may be, that are sold in substantial  
21 quantities to the general public; or

22 “(iii) prices set by law or regulation; or

23 “(B) in an exceptional case when the agency  
24 head determines that the requirements of this sec-

1       tion may be waived and states in writing the reasons  
2       for such determination.

3       “(2) This section need not be applied to a modifica-  
4       tion of a contract or subcontract if—

5               “(A) the contract or subcontract being modified  
6       is one to which this section need not be applied by  
7       reason of clause (i) or (ii) of paragraph (1)(A); and

8               “(B) the modification would not change the  
9       contract or subcontract, as the case may be, from a  
10      contract or subcontract for the acquisition of a com-  
11      mercial item to a contract or subcontract for the ac-  
12      quisition of a noncommercial item.

13      “(c) AUTHORITY TO REQUIRE COST OR PRICING  
14      DATA.—When cost or pricing data are not required to be  
15      submitted by reason of subsection (b), submission of such  
16      data may not be required unless the agency head deter-  
17      mines that such data are necessary for the evaluation by  
18      the agency of the reasonableness of the price of the con-  
19      tract or subcontract. In any case in which the agency head  
20      requires such data to be submitted under this subsection,  
21      the agency head shall document in writing the reasons for  
22      such requirement.

23      “(d) ADDITIONAL EXCEPTION PROVISIONS REGARD-  
24      ING COMMERCIAL ITEMS.—(1) To the maximum extent  
25      practicable, an agency head shall—



1           “(A) conduct procurements of commercial items  
2       on a competitive basis; and

3           “(B) exercise the authority provided in sub-  
4       section (b)(1)(A) to exempt the contracts and sub-  
5       contracts under such procurements from the require-  
6       ments of subsection (a).

7           “(2) In any case in which it is not practicable to con-  
8       duct a procurement of a commercial item on a competitive  
9       basis and the procurement is not covered by an exception  
10      in subsection (b), the contracting officer may nonetheless  
11      exempt a contract or subcontract under the procurement  
12      from the requirements of subsection (a) if—

13           “(A) in accordance with regulations implement-  
14      ing this paragraph, the offeror, contractor, or sub-  
15      contractor, as the case may be, provides the con-  
16      tracting officer with information on the price  
17      charged by such offeror, contractor, or subcontractor  
18      for the same or similar products in the commercial  
19      marketplace; and

20           “(B) the contracting officer determines in writ-  
21      ing that the information provided is adequate for  
22      evaluating the reasonableness of the price of the con-  
23      tract or subcontract.

24           “(3)(A) The Government shall be entitled to a reduc-  
25      tion in price and the return of any overpayment, with in-

1 terest, if an offeror, contractor, or subcontractor provides  
2 materially inaccurate or misleading information to the  
3 contracting officer pursuant to paragraph (2).

4 “(B) Nothing in subparagraph (A) is intended to pre-  
5 clude an agency head from negotiating any contract clause  
6 that provides additional price adjustment authority for the  
7 protection of the Government’s interest in specific types  
8 of contracts, including multiple ordering agreements.

9 “(4)(A) An agency head shall have the right to exam-  
10 ine all information provided by an offeror, contractor, or  
11 subcontractor pursuant to paragraph (2) and all books  
12 and records of such offeror, contractor, or subcontractor  
13 that directly relate to such information in order to deter-  
14 mine whether such information is materially inaccurate or  
15 misleading.

16 “(B) The right under subparagraph (A) shall expire  
17 3 years after the date of award of the contract, or 3 years  
18 after the date of the modification of the contract, with  
19 respect to which the information was provided.

20 “(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR  
21 PRICING DATA.—(1)(A) A prime contract (or change or  
22 modification to a prime contract) under which a certificate  
23 under subsection (a)(2) is required shall contain a provi-  
24 sion that the price of the contract to the United States,  
25 including profit or fee, shall be adjusted to exclude any

1 significant amount by which it may be determined by the  
2 agency head that such price was increased because the  
3 contractor (or any subcontractor required to make avail-  
4 able such a certificate) submitted defective cost or pricing  
5 data.

6 “(B) For the purposes of this section, defective cost  
7 or pricing data are cost or pricing data which, as of the  
8 date of agreement on the price of the contract (or another  
9 date agreed upon between the parties), were inaccurate,  
10 incomplete, or noncurrent. If for purposes of the preceding  
11 sentence the parties agree upon a date other than the date  
12 of agreement on the price of the contract, the date agreed  
13 upon by the parties shall be as close to the date of agree-  
14 ment on the price of the contract as is practicable.

15 “(2) In determining for purposes of a contract price  
16 adjustment under a contract provision required by para-  
17 graph (1) whether, and to what extent, a contract price  
18 was increased because the contractor (or a subcontractor)  
19 submitted defective cost or pricing data, it shall be a de-  
20 fense that the United States did not rely on the defective  
21 data submitted by the contractor or subcontractor.

22 “(3) It is not a defense to an adjustment of the price  
23 of a contract under a contract provision required by para-  
24 graph (1) that—

1           “(A) the price of the contract would not have  
2       been modified even if accurate, complete, and cur-  
3       rent cost or pricing data had been submitted by the  
4       contractor or subcontractor because the contractor  
5       or subcontractor—

6           “(i) was the sole source of the property or  
7       services procured; or

8           “(ii) otherwise was in a superior bargain-  
9       ing position with respect to the property or  
10      services procured;

11          “(B) the contracting officer should have known  
12      that the cost and pricing data in issue were defective  
13      even though the contractor or subcontractor took no  
14      affirmative action to bring the character of the data  
15      to the attention of the contracting officer;

16          “(C) the contract was based on an agreement  
17      between the contractor and the United States about  
18      the total cost of the contract and there was no  
19      agreement about the cost of each item procured  
20      under such contract; or

21          “(D) the prime contractor or subcontractor did  
22      not submit a certification of cost and pricing data  
23      relating to the contract as required under subsection  
24      (a)(2).



1       “(4)(A) A contractor shall be allowed to offset an  
2 amount against the amount of a contract price adjustment  
3 under a contract provision required by paragraph (1) if—

4           “(i) the contractor certifies to the contracting  
5 officer (or to a designated representative of the con-  
6 tracting officer) that, to the best of the contractor’s  
7 knowledge and belief, the contractor is entitled to  
8 the offset; and

9           “(ii) the contractor proves that the cost or pric-  
10 ing data were available before the date of agreement  
11 on the price of the contract (or price of the modi-  
12 fication), or, if applicable consistent with paragraph  
13 (1)(B), another date agreed upon between the par-  
14 ties, and that the data were not submitted as speci-  
15 fied in subsection (a)(3) before such date.

16       “(B) A contractor shall not be allowed to offset an  
17 amount otherwise authorized to be offset under subpara-  
18 graph (A) if—

19           “(i) the certification under subsection (a)(2)  
20 with respect to the cost or pricing data involved was  
21 known to be false when signed; or

22           “(ii) the United States proves that, had the cost  
23 or pricing data referred to in subparagraph (A)(ii)  
24 been submitted to the United States before the date  
25 of agreement on the price of the contract (or price

1 of the modification) or, if applicable under para-  
2 graph (1)(B), another date agreed upon between the  
3 parties, the submission of such cost or pricing data  
4 would not have resulted in an increase in that price  
5 in the amount to be offset.

6 “(f) INTEREST AND PENALTIES FOR CERTAIN OVER-  
7 PAYMENTS.—(1) If the United States makes an overpay-  
8 ment to a contractor under a contract with an executive  
9 agency subject to this section and the overpayment was  
10 due to the submission by the contractor of defective cost  
11 or pricing data, the contractor shall be liable to the United  
12 States—

13 “(A) for interest on the amount of such over-  
14 payment, to be computed—

15 “(i) for the period beginning on the date  
16 the overpayment was made to the contractor  
17 and ending on the date the contractor repays  
18 the amount of such overpayment to the United  
19 States; and

20 “(ii) at the current rate prescribed by the  
21 Secretary of the Treasury under section 6621  
22 of the Internal Revenue Code of 1986; and

23 “(B) if the submission of such defective data  
24 was a knowing submission, for an additional amount  
25 equal to the amount of the overpayment.

1       “(2) Any liability under this subsection of a contrac-  
2   tor that submits cost or pricing data but refuses to submit  
3   the certification required by subsection (a)(2) with respect  
4   to the cost or pricing data shall not be affected by the  
5   refusal to submit such certification.

6       “(g) RIGHT OF UNITED STATES TO EXAMINE CON-  
7   TRACTOR RECORDS.—For the purpose of evaluating the  
8   accuracy, completeness, and currency of cost or pricing  
9   data required to be submitted by this section, the head  
10   of an agency shall have the rights provided by section  
11   304B(a)(2).

12       “(h) REQUIRED REGULATIONS.—(1) The head of  
13   each executive agency shall prescribe regulations identify-  
14   ing the type of procurements for which contracting officers  
15   of that executive agency should consider requiring the sub-  
16   mission of certified cost or pricing data under this section.

17       “(2) The agency head also shall prescribe regulations  
18   concerning the types of information that offerors must  
19   submit for a contracting officer to consider in determining  
20   whether the price of a procurement to the Government is  
21   fair and reasonable when certified cost or pricing data are  
22   not required to be submitted under this section because  
23   the price of the procurement to the United States is not  
24   expected to exceed \$500,000. Such information, at a mini-  
25   mum, shall include appropriate information on the prices

1 at which such offeror has previously sold the same or simi-  
2 lar products.

3 “(i) COST OR PRICING DATA DEFINED.—In this sec-  
4 tion, the term ‘cost or pricing data’ means all facts that,  
5 as of the date of agreement on the price of a contract  
6 (or the price of a contract modification) or, if applicable  
7 consistent with subsection (e)(1)(B), another date agreed  
8 upon between the parties, a prudent buyer or seller would  
9 reasonably expect to affect price negotiations significantly.  
10 Such terms does not include information that is  
11 judgmental, but does include the factual information from  
12 which a judgment was derived.”.

13 (b) TABLE OF CONTENTS.—The table of contents in  
14 the first section of such Act is amended by inserting after  
15 the item relating to section 2304 the following:

“Sec. 304A. Cost or pricing data: truth in negotiations.”.

16 **SEC. 1252. REPEAL OF OBSOLETE PROVISION.**

17 (a) REPEAL.—Section 303E of the Federal Property  
18 and Administrative Services Act of 1949 (41 U.S.C. 253e)  
19 is repealed.

20 (b) CLERICAL AMENDMENT.—The table of contents  
21 in the first section of such Act is amended by striking out  
22 the item relating to section 303E.



## Subtitle C—Research and Development

### SEC. 1301. DELEGATION OF CONTRACTING AUTHORITY.

Section 2356 of title 10, United States Code, is amended to read as follows:

#### “§ 2356. Contracts: delegations

“(a) AUTHORITY.—The Secretary of a military department may delegate any authority under section 1584, 2353, or 2354 of this title to—

“(1) the Under Secretary of his department;

“(2) an Assistant Secretary of his department;

“(3) a Deputy Assistant Secretary of his department; or

“(4) except as provided in subsection (b), the chief, and one assistant to the chief, of any technical service, bureau, or office.

“(b) LIMITATION.—The authority of the Secretary of a military department under section 2353(b)(3) of this title may not be delegated to a person described in subsection (a)(4).”.

### SEC. 1302. RESEARCH PROJECTS.

(a) AUTHORITY TO CONDUCT BASIC, ADVANCED, AND APPLIED RESEARCH.—Section 2358 of title 10, United States Code, is amended to read as follows:

1 **“§ 2358. Research projects**

2       “(a) **AUTHORITY.**—The Secretary of Defense or the  
3 Secretary of a military department may engage in basic,  
4 advanced, and applied research and development projects  
5 that—

6               “(1) are necessary to the responsibilities of  
7 such Secretary’s department in the field of basic, ad-  
8 vanced, and applied research and development; and

9               “(2) either—

10                       “(A) relate to weapons systems and other  
11 military needs; or

12                       “(B) are of potential interest to such de-  
13 partment.

14       “(b) **AUTHORIZED MEANS.**—The Secretary of De-  
15 fense or the Secretary of a military department may per-  
16 form research and development projects—

17               “(1) by contract, cooperative agreement, or  
18 other transaction with, or by grant to, educational or  
19 research institutions, private businesses, or other  
20 agencies of the United States;

21               “(2) by using employees and consultants of the  
22 Department of Defense; or

23               “(3) through one or more of the military de-  
24 partments.

25       “(c) **REQUIREMENT OF POTENTIAL MILITARY IN-**  
26 **TEREST.**—Funds appropriated to the Department of De-

1 fense or to a military department may not be used to fi-  
2 nance any research project or study unless the project or  
3 study is, in the opinion of the Secretary of Defense or the  
4 Secretary of that military department, respectively, of po-  
5 tential interest to the Department of Defense or to such  
6 military department, respectively.”.

7 (b) AUTHORITY RELATED TO ADVANCED RESEARCH  
8 PROJECTS.—

9 (1) REPEAL OF REDUNDANT AUTHORITY.—Sec-  
10 tion 2371 of such title is amended—

11 (A) by striking out subsection (a);

12 (B) by redesignating subsections (b), (c),  
13 (d), (e), (f), and (g) as subsections (a), (b), (c),  
14 (d), (e), and (f), respectively;

15 (C) in subsection (a), as so redesignated—

16 (i) in paragraph (1), by striking out  
17 “subsection (a)” and inserting in lieu  
18 thereof “section 2358 of this title”; and

19 (ii) in paragraph (2), by striking out  
20 “subsection (e)” and inserting in lieu  
21 thereof “subsection (d)”; and

22 (D) in subsection (e), as redesignated by  
23 subparagraph (B)—

1 (i) in paragraph (4), by striking out  
2 “subsection (b)” and inserting in lieu  
3 thereof “subsection (a)”; and

4 (ii) in paragraph (5), by striking out  
5 “subsection (e)” and inserting in lieu  
6 thereof “subsection (d)”.

7 (2) CONSISTENCY OF TERMINOLOGY.—Such  
8 section, as amended by paragraph (1), is further  
9 amended—

10 (A) in subsection (c)(1), by inserting “and  
11 development” after “research” both places it  
12 appears;

13 (B) in subsections (d) and (e)(3), by strik-  
14 ing out “advanced research” and inserting in  
15 lieu thereof “research and development”; and

16 (C) in subsection (e)(1), by striking out  
17 “advanced research is” and inserting in lieu  
18 thereof “research and development are”.

19 (c) REDUNDANT AND OBSOLETE AUTHORITY FOR  
20 THE ARMY.—

21 (1) REPEAL.—Section 4503 of title 10, United  
22 States Code, is repealed.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions at the beginning of chapter 431 of such title



1 is amended by striking out the item relating to sec-  
2 tion 4503.

3 (d) REDUNDANT AND OBSOLETE AUTHORITY FOR  
4 THE AIR FORCE.—

5 (1) REPEAL.—Section 9503 of title 10, United  
6 States Code, is repealed.

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions at the beginning of chapter 931 of such title  
9 is amended by striking out the item relating to sec-  
10 tion 9503.

11 **SEC. 1303. ELIMINATION OF INFLEXIBLE TERMINOLOGY**  
12 **REGARDING COORDINATION AND COMMU-**  
13 **NICATION OF DEFENSE RESEARCH ACTIVI-**  
14 **TIES.**

15 Section 2364 of title 10, United States Code, is  
16 amended—

17 (1) in subsection (b)(5), by striking out “mile-  
18 stone 0, milestone I, and milestone II decisions” and  
19 inserting in lieu thereof “acquisition program deci-  
20 sions”; and

21 (2) in subsection (c), by striking out para-  
22 graphs (2), (3), and (4) and inserting in lieu thereof  
23 the following:

24 “(2) The term ‘acquisition program decisions’  
25 has the meaning given such term in regulations pre-

scribed by the Secretary of Defense for the purposes of this section.”.

### **Subtitle D—Procurement Protests**

#### **PART I—PROTESTS TO THE COMPTROLLER**

##### **GENERAL**

#### **SEC. 1401. REVIEW OF PROTESTS AND EFFECT ON CONTRACTS PENDING DECISION.**

(a) PERIODS FOR CERTAIN ACTIONS.—Section 3553 of title 31, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking out “one working day of” and inserting in lieu thereof “one day after”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking out “25 working days from” and inserting in lieu thereof “25 days after”; and

(ii) in subparagraph (C), by striking out “10 working days from” and inserting in lieu thereof “25 days after”; and

(2) in subsection (c)(3), by striking out “thereafter” and inserting in lieu thereof “after the making of such finding”.

(b) REFERENCE TO HEAD OF CONTRACTING ACTIVITY.—Subsections (c)(2) and (e) of such section are

1 amended by striking out “head of the procuring activity”  
2 and inserting in lieu thereof “head of the contracting ac-  
3 tivity”.

4 (c) SUSPENSION OF PERFORMANCE.—Subsection (d)  
5 of such section is amended to read as follows:

6 “(d)(1) A contractor awarded a Federal agency con-  
7 tract may, during the period described in paragraph (5),  
8 begin performance of the contract and engage in any relat-  
9 ed activities that result in obligations being incurred by  
10 the United States under the contract upon receipt from  
11 the contracting officer responsible for the award of the  
12 contract of an authorization to proceed with performance  
13 of the contract.

14 “(2) The contracting officer may withhold an author-  
15 ization to proceed with performance of the contract during  
16 the period described in paragraph (5) if the contracting  
17 officer determines in writing that—

18 “(A) a protest is likely to be filed; and

19 “(B) the immediate performance of the contract  
20 is not in the best interests of the United States.

21 “(3) Unless the contracting officer makes the deter-  
22 minations described in paragraph (2), performance of the  
23 contract may be authorized in the written notice of award  
24 transmitted to the contractor pursuant to paragraph (3)  
25 or (4)(B) of section 2305(b) of title 10 or subsection (c)

1 or (d)(2) of section 303B of the Federal Property and Ad-  
2 ministrative Services Act of 1949 (41 U.S.C. 253b), as  
3 the case may be.

4 “(4)(A) If the Federal agency awarding the contract  
5 receives notice of a protest in accordance with this section  
6 during the period described in paragraph (5)—

7 “(i) the contracting officer may not authorize  
8 performance of the contract to begin while the pro-  
9 test is pending; or

10 “(ii) if contract performance was authorized in  
11 accordance with paragraph (2) before receipt of the  
12 notice, the contracting officer shall immediately di-  
13 rect the contractor to cease performance under the  
14 contract and to suspend any related activities that  
15 may result in additional obligations being incurred  
16 by the United States under that contract.

17 “(B) Performance and related activities suspended  
18 pursuant to subparagraph (A)(ii) by reason of a protest  
19 may not be resumed while the protest is pending.

20 “(C) The head of the contracting activity may au-  
21 thorize the performance of the contract (notwithstanding  
22 a protest of which the Federal agency has notice under  
23 this section)—

24 “(i) upon a written finding that—



1           “(I) performance of the contract is in the  
2           best interests of the United States; or

3           “(II) urgent and compelling circumstances  
4           that significantly affect interests of the United  
5           States will not permit waiting for the decision  
6           of the Comptroller General concerning the pro-  
7           test; and

8           “(ii) after the Comptroller General is notified of  
9           that finding.

10          “(5) The period referred to in paragraphs (2) and  
11          (4)(A), with respect to a contract, is the period beginning  
12          on the date of the contract award and ending on the later  
13          of—

14               “(A) the date that is 10 days after the date of  
15               the contract award; or

16               “(B) the date that is 7 days after the debriefing  
17               date offered to an unsuccessful offeror for any de-  
18               briefing that is requested and, when requested, is re-  
19               quired.”.

20   **SEC. 1402. DECISIONS ON PROTESTS.**

21          (a) PERIODS FOR CERTAIN ACTIONS.—Section  
22          3554(a) of title 31, United States Code, is amended—

23               (1) in paragraph (1), by striking out “90 work-  
24               ing days from” and inserting in lieu thereof “125  
25               days after”;

1           (2) in paragraph (2), by striking out “45 cal-  
2           endar days from” and inserting “65 days after”;

3           (3) by redesignating paragraph (3) as para-  
4           graph (4); and

5           (4) by inserting after paragraph (2) the follow-  
6           ing new paragraph (3):

7           “(3) An amendment that adds a new ground of pro-  
8           test should be resolved, to the maximum extent prac-  
9           ticable, within the time limit established under paragraph  
10          (1) of this subsection for final decision of the initial pro-  
11          test. If an amended protest cannot be resolved within such  
12          time limit, the Comptroller General may resolve the  
13          amended protest through the express option under para-  
14          graph (2) of this subsection.”.

15          (b) GAO RECOMMENDATIONS ON PROTESTS.—

16           (1) IMPLEMENTATION OF RECOMMENDA-  
17          TIONS.—Section 3554 of title 31, United States  
18          Code, is amended—

19                   (A) in subsection (b), by adding at the end  
20                   the following new paragraph:

21           “(3) If the Federal agency fails to implement fully  
22          the recommendations of the Comptroller General under  
23          this subsection with respect to a solicitation for a contract  
24          or an award or proposed award of a contract within 60  
25          days after receiving the recommendations, the head of the

1 contracting activity responsible for that contract shall re-  
2 port such failure to the Comptroller General not later than  
3 5 working days after the end of such 60-day period.”;

4 (B) by striking out subsection (c) and in-  
5 serting in lieu thereof the following:

6 “(c)(1) If the Comptroller General determines that  
7 a solicitation for a contract or a proposed award or the  
8 award of a contract does not comply with a statute or reg-  
9 ulation, the Comptroller General may recommend that the  
10 Federal agency conducting the procurement pay to an ap-  
11 propriate interested party the costs of—

12 “(A) filing and pursuing the protest, including  
13 reasonable attorney’s fees and consultant and expert  
14 witness fees; and

15 “(B) bid and proposal preparation.

16 “(2) No party may be paid, pursuant to a rec-  
17 ommendation made under the authority of paragraph  
18 (1)—

19 “(A) costs for consultant and expert witness  
20 fees that exceed the rates provided under section  
21 504(b)(1)(A) of title 5 for expert witnesses; or

22 “(B) costs for attorney’s fees that exceed the  
23 rates provided for attorneys under section  
24 504(b)(1)(A) of title 5.

1       “(3) If the Comptroller General recommends under  
2 paragraph (1) that a Federal agency pay costs to an inter-  
3 ested party, the Federal agency shall—

4               “(A) pay the costs promptly out of funds appro-  
5 priated by section 1304 of this title for the payment  
6 of judgments and reimburse that appropriation ac-  
7 count out of available funds or out of additional  
8 funds appropriated for such Federal agency to make  
9 such reimbursement; or

10              “(B) if the Federal agency does not make such  
11 payment, promptly report to the Comptroller Gen-  
12 eral the reasons for the failure to follow the Comp-  
13 troller General’s recommendation.

14       “(4) If the Comptroller General recommends under  
15 paragraph (1) that a Federal agency pay costs to an inter-  
16 ested party, the Federal agency and the interested party  
17 shall attempt to reach an agreement on the amount of the  
18 costs to be paid. If the Federal agency and the interested  
19 party are unable to agree on the amount to be paid, the  
20 Comptroller General may, upon the request of the inter-  
21 ested party, recommend to the Federal agency the amount  
22 of the costs that the Federal agency should pay.”; and

23               (C) by striking out subsection (e) and in-  
24 serting in lieu thereof the following:



1       “(e)(1) The Comptroller General shall report prompt-  
2 ly to the Committee on Governmental Affairs and the  
3 Committee on Appropriations of the Senate and to the  
4 Committee on Government Operations and the Committee  
5 on Appropriations of the House of Representatives any  
6 case in which a Federal agency fails to implement fully  
7 a recommendation of the Comptroller General under sub-  
8 section (b) or (c). The report shall include—

9           “(A) a comprehensive review of the pertinent  
10 procurement, including the circumstances of the fail-  
11 ure of the Federal agency to implement a rec-  
12 ommendation of the Comptroller General; and

13           “(B) a recommendation regarding whether, in  
14 order to correct an inequity or to preserve the integ-  
15 rity of the procurement process, the Congress should  
16 consider—

17           “(i) private relief legislation;

18           “(ii) legislative rescission or cancellation of  
19 funds;

20           “(iii) further investigation by the Congress;

21           or

22           “(iv) other action.

23       “(2) Not later than January 31 of each year, the  
24 Comptroller General shall transmit to the Congress a re-  
25 port containing a summary of each instance in which a

1 Federal agency did not fully implement a recommendation  
2 of the Comptroller General under subsection (b) or (c)  
3 during the preceding year. The report shall also describe  
4 each instance in which a final decision in a protest was  
5 not rendered within 125 days after the date the protest  
6 is submitted to the Comptroller General.”.

7           (2) REQUIREMENT FOR PAYMENT IN ACCORD-  
8       ANCE WITH PRIOR GAO DETERMINATIONS.—  
9       Amounts to which the Comptroller General declared  
10      an interested party to be entitled under section 3554  
11      of title 31, United States Code, as in effect imme-  
12      diately before the enactment of this Act, shall, if not  
13      paid or otherwise satisfied by the Federal agency  
14      concerned before the date of the enactment of this  
15      Act, be paid promptly from the appropriation made  
16      by section 1304 of such title for the payment of  
17      judgments. The Federal agency shall reimburse that  
18      appropriation account out of available funds or out  
19      of additional funds appropriated for such Federal  
20      agency to make such reimbursement. If the Federal  
21      agency is unable to make the reimbursement out of  
22      available funds, the head of such agency shall imme-  
23      diately take such action as may be necessary to  
24      transmit to Congress a request for an appropriation  
25      of additional funds to make such reimbursement.

1 (c) REFERENCE TO HEAD OF CONTRACTING ACTIV-  
 2 ITY.—Subsections (b)(2) and (d) of section 3554 of title  
 3 31, United States Code, are amended by striking out  
 4 “head of the procuring activity” and inserting in lieu  
 5 thereof “head of the contracting activity”.

6 **SEC. 1403. REGULATIONS.**

7 (a) COMPUTATION OF PERIODS.—Section 3555 of  
 8 title 31, United States Code, is amended—

9 (1) by redesignating subsection (b) as sub-  
 10 section (d); and

11 (2) by inserting after subsection (a) the follow-  
 12 ing new subsection (b):

13 “(b) The procedures shall provide that, in the com-  
 14 putation of any period described in this subchapter—

15 “(1) the day of the act, event, or default from  
 16 which the designated period of time begins to run  
 17 not be included; and

18 “(2) the last day after such act, event, or de-  
 19 fault be included, unless—

20 “(A) such last day is a Saturday, a Sun-  
 21 day, or a legal holiday; or

22 “(B) in the case of a filing of a paper at  
 23 the General Accounting Office or a Federal  
 24 agency, such last day is a day on which weather  
 25 or other conditions make the General Account-

1           ing Office or Federal agency inaccessible, in  
2           which event the next day that is not a Satur-  
3           day, Sunday, or legal holiday shall be in-  
4           cluded.”.

5           (b) ELECTRONIC FILINGS AND DISSEMINATIONS.—

6   Such section, as amended by subsection (a), is further  
7   amended by inserting after subsection (b) the following  
8   new subsection:

9           “(c) The Comptroller General may prescribe proce-  
10   dures for the electronic filing and dissemination of docu-  
11   ments and information required under this subchapter. In  
12   prescribing such procedures, the Comptroller General shall  
13   consider the ability of all parties to achieve electronic ac-  
14   cess to such documents and records.”.

15           (c) REPEAL OF OBSOLETE DEADLINE.—Subsection  
16   (a) of such section is amended by striking out “Not later  
17   than January 15, 1985, the” and inserting in lieu thereof  
18   “The”.

19       **PART II—PROTESTS IN THE FEDERAL COURTS**

20       **SEC. 1421. NONEXCLUSIVITY OF REMEDIES.**

21           Section 3556 of title 31, United States Code, is  
22   amended by striking out “a district court of the United  
23   States or the United States Claims Court” in the first sen-  
24   tence and inserting in lieu thereof “the United States  
25   Court of Federal Claims”.



1   **SEC. 1422. JURISDICTION OF THE UNITED STATES COURT**  
2                   **OF FEDERAL CLAIMS.**

3       (a) CLAIMS AGAINST THE UNITED STATES AND BID  
4 PROTESTS.—Section 1491 of title 28, United States Code,  
5 is amended—

6           (1) by redesignating subsection (b) as sub-  
7 section (d);

8           (2) in subsection (a)—

9               (A) by striking out “(a)(1)” and inserting  
10 in lieu thereof “(a) CLAIMS AGAINST THE  
11 UNITED STATES.—”;

12               (B) in paragraph (2), by striking out “(2)  
13 To” and inserting in lieu thereof “(b) REMEDY  
14 AND RELIEF.—To”; and

15               (C) by striking out paragraph (3); and

16           (3) by inserting after subsection (b), as des-  
17 igned by paragraph (2)(B), the following new sub-  
18 section (c):

19       “(c) BID PROTESTS.—(1) The United States Court  
20 of Federal Claims has exclusive jurisdiction to render  
21 judgment on an action by an interested party objecting  
22 to a solicitation by a Federal agency for bids or proposals  
23 for a proposed contract or to a proposed award or the  
24 award of a contract. The court has jurisdiction to enter-  
25 tain such an action without regard to whether suit is insti-  
26 tuted before or after the contract is awarded.

1       “(2) To afford relief in such an action, the court may  
2       award any relief that the court considers proper, including  
3       declaratory and injunctive relief.

4       “(3) In exercising jurisdiction under this subsection,  
5       the court shall give due regard to the interests of national  
6       defense and national security and the need for expeditious  
7       resolution of the action.

8       “(4) The district courts of the United States do not  
9       have jurisdiction of any action referred to in paragraph  
10      (1).”.

11       (b) CLERICAL AMENDMENTS.—

12           (1) SECTION HEADING.—The heading of such  
13       section is amended by inserting “**BID PROTESTS;**”  
14       after “**GENERALLY;**”.

15           (2) TABLE OF SECTIONS.—The table of sections  
16       at the beginning of chapter 91 of title 28, United  
17       States Code, is amended by striking out the item re-  
18       lating to section 1491 and inserting in lieu thereof  
19       the following:

“1491. Claims against United States generally; bid protests; actions involving  
Tennessee Valley Authority.”.

**PART III—PROTESTS IN PROCUREMENTS OF  
AUTOMATIC DATA PROCESSING**

**SEC. 1431. REVOCATION OF DELEGATIONS OF PROCUREMENT  
AUTHORITY.**

Section 111(b)(3) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(b)(3)) is amended by inserting after the third sentence the following: “The Administrator may revoke a delegation of authority with respect to a particular contract before or after award of the contract, except that the Administrator may revoke a delegation after the contract is awarded only when there is a finding of a violation of law or regulation in connection with the contract award.”.

**SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS.**

The first sentence of section 111(f)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(1)) is amended to read as follows: “Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the ‘board’) shall review, as provided in this subsection, any decision by a Federal agency that is al-

1 leged to violate a statute, a regulation, or the conditions  
2 of a delegation of procurement authority.”.

3 **SEC. 1433. PERIODS FOR CERTAIN ACTIONS.**

4 (a) **SUSPENSION OF PROCUREMENT AUTHORITY.—**

5 Section 111(f) of the Federal Property and Administrative  
6 Services Act of 1949 (40 U.S.C. 759(f)) is amended in  
7 paragraph (3) by striking out subparagraph (A) and in-  
8 serting in lieu thereof the following:

9 “(A)(i) If, with respect to an award of a contract,  
10 the board receives notice of a protest under this subsection  
11 within the period described in clause (ii), the board shall,  
12 at the request of an interested party, hold a hearing to  
13 determine whether the board should suspend the procure-  
14 ment authority of the Administrator or the Administra-  
15 tor’s delegation of procurement authority for the protested  
16 procurement on an interim basis until the board can de-  
17 cide the protest.

18 “(ii) The period referred to in clause (i) is the period  
19 beginning on the date on which the contract is awarded  
20 and ending at the end of the later of—

21 “(I) the tenth day after the date of contract  
22 award; or

23 “(II) the seventh day after the debriefing date  
24 offered to an unsuccessful offeror for any debriefing  
25 that is requested and, when requested, is required.



1       “(iii) The board shall hold the requested hearing  
2 within 7 days after the date of the filing of the protest  
3 or, in the case of a request for debriefing under the provi-  
4 sions of section 2305(b)(5) of title 10, United States Code,  
5 or section 303B(e) of this Act, within 7 days after the  
6 later of the date of the filing of the protest or the date  
7 of the debriefing.”.

8       (b) FINAL DECISION.—Paragraph (4)(B) of such sec-  
9 tion 111(f) is amended—

10           (1) by striking out “45 working days” and in-  
11 serting in lieu thereof “65 days”; and

12           (2) by adding at the end the following: “An  
13 amendment which adds a new ground of protest  
14 should be resolved, to the maximum extent prac-  
15 ticable, within the time limits established for resolu-  
16 tion of the initial protest.”.

17 **SEC. 1434. DISMISSALS OF PROTESTS.**

18       Section 111(f)(4) of the Federal Property and Ad-  
19 ministrative Services Act of 1949 (40 U.S.C. 759(f)(4))  
20 is amended by striking out subparagraph (C) and insert-  
21 ing in lieu thereof the following:

22       “(C) The board may dismiss a protest that the board  
23 determines—

24           “(i) is frivolous;

25           “(ii) has been brought in bad faith; or

1           “(iii) does not state on its face a valid basis for  
2       protest.”.

3   **SEC. 1435. AWARD OF COSTS.**

4       Section 111(f)(5) is amended by striking out sub-  
5   paragraph (C) and inserting in lieu thereof the following:

6       “(C) Whenever the board makes such a determina-  
7   tion, it may, in accordance with section 1304 of title 31,  
8   United States Code, further declare an appropriate pre-  
9   vailing party to be entitled to the cost of filing and pursu-  
10   ing the protest (including reasonable attorney’s fees and  
11   consultant and expert witness fees), and bid and proposal  
12   preparation. However, no party may be declared entitled  
13   to costs for consultant and expert witness fees that exceed  
14   the rates provided under section 504(b)(1)(A) of title 5,  
15   United States Code, for expert witnesses or to costs for  
16   attorney’s fees that exceed the rates provided for attorneys  
17   under section 504(b)(1)(A) of title 5, United States  
18   Code.”.

19   **SEC. 1436. DISMISSAL AGREEMENTS.**

20       Section 111(f)(5) of the Federal Property and Ad-  
21   ministrative Services Act of 1949 (40 U.S.C. 759(f)(5))  
22   is amended by adding at the end the following new sub-  
23   paragraphs:

24       “(D) Any agreement that provides for the dismissal  
25   of a protest and involves a direct or indirect expenditure

1 of appropriated funds shall be submitted to the board and  
2 shall be made a part of the public record (subject to any  
3 protective order considered appropriate by the board) be-  
4 fore dismissal of the protest. If a Federal agency is a party  
5 to a settlement agreement, the submission of the agree-  
6 ment submitted to the board shall include a memorandum,  
7 signed by the contracting officer concerned, that describes  
8 in detail the procurement, the grounds for protest, the  
9 Federal Government's position regarding the grounds for  
10 protest, the terms of the settlement, and the agency's posi-  
11 tion regarding the propriety of the award or proposed  
12 award of the contract at issue in the protest.

13 “(E) Payment of amounts due from an agency under  
14 subparagraph (C) or under the terms of a settlement  
15 agreement under subparagraph (D) shall be made from  
16 the appropriation made by section 1304 of title 31, United  
17 States Code, for the payment of judgments. The Federal  
18 agency concerned shall reimburse that appropriation ac-  
19 count out of funds available for the procurement.”.

20 **SEC. 1437. JURISDICTION OF DISTRICT COURTS.**

21 Section 111(f)(6)(C) of the Federal Property and Ad-  
22 ministrative Services Act of 1949 (40 U.S.C.  
23 759(f)(6)(C)) is amended by striking out “a district court  
24 of the United States or the United States Claims Court”

1 in the third sentence and inserting in lieu thereof “the  
2 United States Court of Federal Claims”.

3 **SEC. 1438. MATTERS TO BE COVERED IN REGULATIONS.**

4 Section 111(f) of the Federal Property and Adminis-  
5 trative Services Act of 1949 (40 U.S.C. 759(f)) is amend-  
6 ed by striking out paragraph (8) and inserting in lieu  
7 thereof the following:

8 “(7)(A) The board shall adopt and issue such rules  
9 and procedures as may be necessary to the expeditious dis-  
10 position of protests filed under the authority of this sub-  
11 section.

12 “(B) The procedures shall provide that, in the com-  
13 putation of any period described in this subsection—

14 “(i) the day of the act, event, or default from  
15 which the designated period of time begins to run  
16 not be included; and

17 “(ii) the last day after such act, event, or de-  
18 fault be included, unless—

19 “(I) such last day is a Saturday, a Sunday,  
20 or a legal holiday; or

21 “(II) in the case of a filing of a paper at  
22 the board, such last day is a day on which  
23 weather or other conditions make the board or  
24 Federal agency inaccessible, in which event the



1           next day that is not a Saturday, Sunday, or  
2           legal holiday shall be included.

3           “(C) The procedures may provide for electronic filing  
4 and dissemination of documents and information required  
5 under this subsection and in so providing shall consider  
6 the ability of all parties to achieve electronic access to such  
7 documents and records.

8           “(D) The procedures shall provide that if the board  
9 expressly finds that a protest or a portion of a protest  
10 is frivolous or has not been brought or pursued in good  
11 faith, or that any person has willfully abused the board’s  
12 process during the course of a protest, the board may im-  
13 pose appropriate sanctions. Such sanctions may include  
14 the dismissal of the protest and an award to any other  
15 party of costs (including reasonable attorneys’ fees not to  
16 exceed the rates provided for pursuant to paragraph  
17 (5)(C)) incurred as a result of such protest or conduct.”.

18 **SEC. 1439. DEFINITIONS.**

19           (a) PROTEST.—Section 111(f)(9)(A) of the Federal  
20 Property and Administrative Services Act of 1949 (40  
21 U.S.C. 759(f)(9)(A)) is amended to read as follows:

22           “(A) the term ‘protest’ means a written objec-  
23 tion by an interested party—

1           “(i) to a solicitation or other request by a  
2           Federal agency for offers for a contract for the  
3           procurement of property or services;

4           “(ii) to the cancellation of such a sollicita-  
5           tion or other request;

6           “(iii) to an award or proposed award of  
7           such a contract; or

8           “(iv) to a termination or cancellation of an  
9           award of such a contract, if that termination or  
10          cancellation is alleged to be based in whole or  
11          in part on improprieties concerning the award  
12          of the contract;”.

13          (b) PREVAILING PARTY.—Section 111(f)(9) of such  
14          Act is amended by adding at the end the following new  
15          subparagraph:

16               “(C) the term ‘prevailing party’, with respect to  
17          a determination of the board under paragraph  
18          (5)(B) that a challenged action of a Federal agency  
19          violates a statute or regulation or the conditions of  
20          a delegation of procurement authority issued pursu-  
21          ant to this section, means a party that demonstrated  
22          such violation.”.

1   **SEC. 1440. OVERSIGHT OF ACQUISITION OF AUTOMATIC**  
2                   **DATA PROCESSING EQUIPMENT BY FEDERAL**  
3                   **AGENCIES.**

4       Section 111 of the Federal Property and Administra-  
5   tive Services Act of 1949 (40 U.S.C. 759) is amended by  
6   adding at the end the following new subsection:

7       “(h)(1) The Administrator shall collect and compile  
8   data regarding the procurement of automatic data proc-  
9   essing equipment under this section. The data collected  
10   and compiled shall include, at a minimum, with regard to  
11   each procurement the following:

12           “(A) The procuring agency.

13           “(B) The contractor.

14           “(C) The automatic data processing equipment  
15   and services procured.

16           “(D) The manufacturer of the equipment pro-  
17   cured.

18           “(E) The amount of the contract, to the extent  
19   that the amount is not proprietary information.

20           “(F) The type of contract used.

21           “(G) The extent of competition for award.

22           “(H) Compatibility restrictions.

23           “(I) Significant modifications of the contract.

24           “(J) Contract price, to the extent that the price  
25   is not proprietary information.

1       “(2) The head of each Federal agency shall report  
 2 to the Administrator in accordance with regulations issued  
 3 by the Administrator all information that the Adminis-  
 4 trator determines necessary in order to satisfy the require-  
 5 ments in paragraph (1).

6       “(3) The Administrator shall—

7               “(A) carry out a systematic, periodic review of  
 8 information received under this subsection;

9               “(B) use such information, as appropriate, to  
 10 determine the compliance of Federal agencies with  
 11 the requirements of this section; and

12               “(C) have the authority to suspend the delega-  
 13 tion to a Federal agency of authority to lease or pur-  
 14 chase automatic data processing equipment upon  
 15 any failure by the head of the Federal agency to re-  
 16 port to the Administrator in accordance with para-  
 17 graph (2).”.

## 18       **Subtitle E—Definitions and Other** 19                               **Matters**

### 20       **PART I—ARMED SERVICES ACQUISITIONS**

#### 21       **SEC. 1501. DEFINITIONS.**

22       Section 2302 of title 10, United States Code, is  
 23 amended—

24               (1) by striking out paragraphs (3), (4), (5), and  
 25               (7);



(2) by redesignating paragraph (6) as paragraph (5); and

(3) by inserting after paragraph (2) the following:

“(3) The terms ‘commercial item’, ‘full and open competition’, ‘major system’, ‘nondevelopmental item’, ‘procurement’, ‘procurement system’, ‘responsible source’, ‘standards’, and ‘technical data’, have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

“(4) The term ‘simplified acquisition threshold’ has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.”.

## **SEC. 1502. DELEGATION OF PROCUREMENT FUNCTIONS.**

### **(a) CONSOLIDATION OF DELEGATION AUTHORITY.—**

Section 2311 of title 10, United States Code, is amended to read as follows:

1   **“§ 2311. Delegation**

2           “(a) IN GENERAL.—Except to the extent expressly  
3 prohibited by another provision of law, the head of an  
4 agency may delegate, subject to his direction, to any other  
5 officer or official of that agency, any power under this  
6 chapter.

7           “(b) PROCUREMENTS FOR OR WITH OTHER AGEN-  
8 CIES.—Subject to subsection (a), to facilitate the procure-  
9 ment of property and services covered by this chapter by  
10 each agency named in section 2303 of this title for any  
11 other agency, and to facilitate joint procurement by those  
12 agencies—

13           “(1) the head of an agency may, within his  
14 agency, delegate functions and assign responsibilities  
15 relating to procurement;

16           “(2) the heads of two or more agencies may by  
17 agreement delegate procurement functions and as-  
18 sign procurement responsibilities from one agency to  
19 another of those agencies or to an officer or civilian  
20 employee of another of those agencies; and

21           “(3) the heads of two or more agencies may  
22 create joint or combined offices to exercise procure-  
23 ment functions and responsibilities.

24           “(c) APPROVAL OF TERMINATIONS AND REDUCTIONS  
25 OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary  
26 of Defense shall prescribe regulations that prohibit each

1 military department participating in a joint acquisition  
2 program approved by the Under Secretary of Defense for  
3 Acquisition from terminating or substantially reducing its  
4 participation in such program without the approval of the  
5 Under Secretary.

6 “(2) The regulations shall include the following provi-  
7 sions:

8 “(A) A requirement that, before any such ter-  
9 mination or substantial reduction in participation is  
10 approved, the proposed termination or reduction be  
11 reviewed by the Joint Requirements Oversight Coun-  
12 cil of the Department of Defense.

13 “(B) A provision that authorizes the Under  
14 Secretary of Defense for Acquisition to require a  
15 military department approved for termination or  
16 substantial reduction in participation in a joint ac-  
17 quisition program to continue to provide some or all  
18 of the funding necessary for the acquisition program  
19 to be continued in an efficient manner.”.

20 (b) CONFORMING REPEAL.—(1) Section 2308 of title  
21 10, United States Code, is repealed.

22 (2) The table of sections at the beginning of chapter  
23 137 of such title is amended by striking out the item relat-  
24 ed to section 2308.

1 **SEC. 1503. DETERMINATIONS AND DECISIONS.**

2 Section 2310 of title 10, United States Code, is  
3 amended to read as follows:

4 **“§ 2310. Determinations and decisions**

5 “(a) INDIVIDUAL OR CLASS DETERMINATIONS AND  
6 DECISIONS AUTHORIZED.—Determinations and decisions  
7 required to be made under this chapter by the head of  
8 an agency may be made for an individual purchase or con-  
9 tract or, except to the extent expressly prohibited by an-  
10 other provision of law, for a class of purchases or con-  
11 tracts. Such determinations and decisions are final.

12 “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-  
13 termination or decision under section 2306(g)(1), 2307(c),  
14 or 2313(c) of this title shall be based on a written finding  
15 by the person making the determination or decision. The  
16 finding shall set out facts and circumstances that support  
17 the determination or decision.

18 “(2) Each finding referred to in paragraph (1) shall  
19 be final. The head of the agency making such finding shall  
20 maintain a copy of the finding for not less 6 years after  
21 the date of the determination or decision.”.

22 **SEC. 1504. UNDEFINITIZED CONTRACTUAL ACTIONS: RE-**  
23 **STRICTIONS.**

24 (a) CLARIFICATION OF LIMITATION.—Subsection (b).  
25 of section 2326 of title 10, United States Code, is  
26 amended—



(1) in the subsection caption, by striking out “AND EXPENDITURE”;

(2) in paragraph (1)(B), by striking out “or expended”;

(3) in paragraph (2), by striking out “expend” and inserting in lieu thereof “obligate”; and

(4) in paragraph (3)—

(A) by striking out “expended” and inserting in lieu thereof “obligated”; and

(B) by striking out “expend” and inserting in lieu thereof “obligate”.

(b) WAIVER AUTHORITY.—Such subsection is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph (4):

“(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.”.

(c) INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.—Section 2326(g)(1)(B) of title 10, United States Code, is amended by striking out “small purchase thresh-

1 old” and inserting in lieu thereof “simplified acquisition  
2 threshold”.

3 **SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUC-**  
4 **TION SPECIAL TEST EQUIPMENT: CONTRACT**  
5 **TERMS AND CONDITIONS.**

6 (a) **REPEAL.**—Section 2329 of title 10, United States  
7 Code, is repealed.

8 (b) **TECHNICAL AMENDMENT.**—The table of sections  
9 at the beginning of chapter 137 of such title is amended  
10 by striking out the item related to section 2329.

11 **SEC. 1506. REGULATIONS FOR BIDS.**

12 Section 2381(a) of title 10, United States Code, is  
13 amended by striking out “(a) The Secretary” and all that  
14 follows through the end of paragraph (1) and inserting  
15 in lieu thereof the following:

16 “(a) The Secretary of Defense or the Secretary of  
17 a military department may—

18 “(1) prescribe regulations for the preparation,  
19 submission, and opening of bids for contracts; and”.

1 **SEC. 1507. REPEAL OF EXECUTED REQUIREMENT RELAT-**  
 2 **ING TO CERTIFICATE OF INDEPENDENT**  
 3 **PRICE DETERMINATION IN CERTAIN DEPART-**  
 4 **MENT OF DEFENSE CONTRACT SOLICITA-**  
 5 **TIONS.**

6 Section 821 of Public Law 101-189 (103 Stat. 1503)  
 7 is repealed.

8 **PART II—CIVILIAN AGENCY ACQUISITIONS**

9 **SEC. 1551. DEFINITIONS.**

10 Section 309(c) of the Federal Property and Adminis-  
 11 trative Services Act of 1949 (41 U.S.C. 259(c)) is amend-  
 12 ed by striking out “and ‘supplies’” and inserting in lieu  
 13 thereof “‘supplies’, ‘commercial item’, ‘nondevelopmental  
 14 item’, and ‘simplified acquisition threshold’”.

15 **SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.**

16 Title III of the Federal Property and Administrative  
 17 Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

18 (1) by redesignating sections 309 and 310 as  
 19 sections 312 and 313, respectively; and

20 (2) by inserting after section 308 the following  
 21 new section 309:

22 “DELEGATION

23 “SEC. 309. (a) IN GENERAL.—Except to the extent  
 24 expressly prohibited by another provision of law, an agen-  
 25 cy head may delegate, subject to his direction, to any other

1 officer or official of that agency, any power under this  
2 title.

3 “(b) PROCUREMENTS FOR OR WITH OTHER AGEN-  
4 CIES.—Subject to subsection (a), to facilitate the procure-  
5 ment of property and services covered by this title by each  
6 executive agency for any other executive agency, and to  
7 facilitate joint procurement by those executive agencies—

8 “(1) an agency head may, within his executive  
9 agency, delegate functions and assign responsibilities  
10 relating to procurement;

11 “(2) the heads of two or more executive agen-  
12 cies may by agreement delegate procurement func-  
13 tions and assign procurement responsibilities from  
14 one executive agency to another of those executive  
15 agencies or to an officer or civilian employee of an-  
16 other of those executive agencies; and

17 “(3) the heads of two or more executive agen-  
18 cies may create joint or combined offices to exercise  
19 procurement functions and responsibilities.”.

20 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

21 Title III of the Federal Property and Administrative  
22 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended  
23 by section 1552, is further amended by inserting after sec-  
24 tion 309 the following new section 310:



1           “DETERMINATIONS AND DECISIONS

2           “SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINA-  
3 TIONS AND DECISIONS AUTHORIZED.—Determinations  
4 and decisions required to be made under this title by an  
5 agency head may be made for an individual purchase or  
6 contract or, except to the extent expressly prohibited by  
7 another provision of law, for a class of purchases or con-  
8 tracts. Such determinations and decisions are final.

9           “(b) WRITTEN FINDINGS REQUIRED.—(1) Each de-  
10 termination under section 305(c) shall be based on a writ-  
11 ten finding by the person making the determination or de-  
12 cision. The finding shall set out facts and circumstances  
13 that support the determination or decision.

14           “(2) Each finding referred to in paragraph (1) shall  
15 be final. The agency head making such finding shall main-  
16 tain a copy of the finding for not less 6 years after the  
17 date of the determination or decision.”.

18 **SEC. 1554. UNDEFINITIZED CONTRACTUAL ACTIONS: RE-**  
19 **STRICTIONS.**

20           Title III of the Federal Property and Administrative  
21 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended  
22 by section 1553, is further amended by inserting after sec-  
23 tion 310 the following new section:

24 **“UNDEFINITIZED CONTRACTUAL ACTIONS: RESTRICTIONS**

25           “SEC. 311. (a) IN GENERAL.—An agency head may  
26 not enter into an undefinitized contractual action unless

1 the request to the agency head for authorization of the  
2 contractual action includes a description of the anticipated  
3 effect on requirements of the executive agency concerned  
4 if a delay is incurred for purposes of determining contrac-  
5 tual terms, specifications, and price before performance is  
6 begun under the contractual action.

7 “(b) LIMITATIONS ON OBLIGATIONS OF FUNDS.—(1)  
8 A contracting officer of an executive agency may not enter  
9 into an undefinitized contractual action unless the con-  
10 tractual action provides for agreement upon contractual  
11 terms, specifications, and price by the earlier of—

12 “(A) the end of the 180-day period beginning  
13 on the date on which the contractor submits a quali-  
14 fying proposal (as defined in subsection (f)) to de-  
15 finitize the contractual terms, specifications, and  
16 price; or

17 “(B) the date on which the amount of funds ob-  
18 ligated under the contractual action is equal to more  
19 than 50 percent of the negotiated overall ceiling  
20 price for the contractual action.

21 “(2) Except as provided in paragraph (3), the con-  
22 tracting officer for an undefinitized contractual action  
23 may not obligate with respect to such contractual action  
24 an amount that is equal to more than 50 percent of the  
25 negotiated overall ceiling price until the contractual terms,

1 specifications, and price are definitized for such contrac-  
2 tual action.

3       “(3) If a contractor submits a qualifying proposal (as  
4 defined in subsection (f)) to definitize an undefinitized  
5 contractual action before an amount equal to more than  
6 50 percent of the negotiated overall ceiling price is obli-  
7 gated on such action, the contracting officer for such ac-  
8 tion may not obligate with respect to such contractual ac-  
9 tion an amount that is equal to more than 75 percent of  
10 the negotiated overall ceiling price until the contractual  
11 terms, specifications, and price are definitized for such  
12 contractual action.

13       “(4) This subsection does not apply to an  
14 undefinitized contractual action for the purchase of initial  
15 spares.

16       “(c) INCLUSION OF NON-URGENT REQUIRE-  
17 MENTS.—Requirements for spare parts and support  
18 equipment that are not needed on an urgent basis may  
19 not be included in an undefinitized contractual action for  
20 spare parts and support equipment that are needed on an  
21 urgent basis unless the agency head approves such inclu-  
22 sion as being—

23               “(1) good business practice; and

24               “(2) in the best interests of the United States.

1       “(d) MODIFICATION OF SCOPE.—The scope of an  
2    undefinitized contractual action under which performance  
3    has begun may not be modified unless the agency head  
4    approves such modification as being—

5               “(1) good business practice; and

6               “(2) in the best interests of the United States.

7       “(e) ALLOWABLE PROFIT.—An agency head shall en-  
8    sure that the profit allowed on an undefinitized contrac-  
9    tual action for which the final price is negotiated after  
10   a substantial portion of the performance required is com-  
11   pleted reflects—

12              “(1) the possible reduced cost risk of the con-  
13    tractor with respect to costs incurred during per-  
14    formance of the contract before the final price is ne-  
15    gotiated; and

16              “(2) the reduced cost risk of the contractor  
17    with respect to costs incurred during performance of  
18    the remaining portion of the contract.

19       “(f) DEFINITIONS.—In this section:

20              “(1) The term ‘undefinitized contractual action’  
21    means a new procurement action entered into by an  
22    agency head for which the contractual terms, speci-  
23    fications, or price are not agreed upon before per-  
24    formance is begun under the action. Such term does



1 not include contractual actions with respect to the  
2 following:

3 “(A) Purchases in an amount not in excess  
4 of the amount of the simplified acquisition  
5 threshold.

6 “(B) Congressionally mandated long-lead  
7 procurement contracts.

8 “(2) The term ‘qualifying proposal’ means a  
9 proposal that contains sufficient information to en-  
10 able the agency head concerned to conduct complete  
11 and meaningful audits of the information contained  
12 in the proposal and of any other information that  
13 the agency head is entitled to review in connection  
14 with the contract, as determined by the contracting  
15 officer.”.

16 **SEC. 1555. REPEAL OF AMENDMENTS TO UNCODIFIED**  
17 **TITLE.**

18 The following provisions of law are repealed:

19 (1) Section 532 of Public Law 101–509 (104  
20 Stat. 1470) and the matter set out in quotes in that  
21 section.

22 (2) Section 529 of Public Law 102–393 (106  
23 Stat. 1761) and the matter inserted and added by  
24 that section.

## TITLE II—CONTRACT ADMINISTRATION

### Subtitle A—Contract Payment

#### PART I—ARMED SERVICES ACQUISITIONS

##### SEC. 2001. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 2307 of title 10, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

**“§ 2307. Contract financing”;**

(2) by striking out “(a) The head of an agency” and inserting in lieu thereof “(b) PAYMENT AUTHORITY.—The head of an agency”;

(3) by striking out “(b) Payments” and inserting in lieu thereof “(c) PAYMENT AMOUNT.—Payments”;

(4) by striking out “(c) Advance payments” and inserting in lieu thereof “(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments”;

(5) by striking out “(d)(1) The Secretary of Defense” and inserting in lieu thereof “(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense”; and

1           (6) by striking out “(e)(1) In any case” and in-  
2       serting in lieu thereof “(g) ACTION IN CASE OF  
3       FRAUD.—(1) In any case”.

4       (b) FINANCING POLICY.—Such section, as amended  
5       by subsection (a), is further amended by inserting after  
6       the section heading the following new subsection (a):

7       “(a) POLICY.—Payments authorized under this sec-  
8       tion and made for financing purposes should be made peri-  
9       odically and in a timely manner to facilitate contract per-  
10      formance while protecting the security interests of the  
11      Government. Government financing shall be provided only  
12      to the extent necessary to ensure prompt and efficient per-  
13      formance and only after the availability of private financ-  
14      ing is considered. A contractor’s use of funds received as  
15      contract financing and the contractor’s financial condition  
16      shall be monitored. If the contractor is a small business  
17      concern, special attention shall be given to meeting the  
18      contractor’s financial need.”.

19      (c) TERMINOLOGY CORRECTION.—Such section, as  
20      amended by subsection (a)(2), is further amended in sub-  
21      section (b)(2) by striking out “bid”.

22      (d) EFFECTIVE DATE OF LIEN RELATED TO AD-  
23      VANCE PAYMENTS.—Such section, as amended by sub-  
24      section (a)(4), is further amended in subsection (d) by in-  
25      serting before the period at the end of the third sentence

1 the following: “and is effective immediately upon the first  
2 advancement of funds without filing, notice, or any other  
3 action by the United States”.

4 (e) CONDITIONS FOR PROGRESS PAYMENTS.—Such  
5 section, as amended by subsection (a)(5), is further  
6 amended in subsection (e)—

7 (1) in the first sentence of paragraph (1), by  
8 striking out “work, which” and all that follows  
9 through “accomplished” and inserting in lieu thereof  
10 “work accomplished that meets standards estab-  
11 lished under the contract”; and

12 (2) by striking out paragraph (3) and inserting  
13 in lieu thereof the following:

14 “(3) This subsection applies to a contract for an  
15 amount equal to or greater than the simplified acquisition  
16 threshold.”.

17 (f) NAVY CONTRACTS.—Such section, as amended by  
18 subsection (a)(5), is further amended by inserting after  
19 subsection (e) the following new subsection (f):

20 “(f) CERTAIN NAVY CONTRACTS.—(1) The Secretary  
21 of the Navy shall provide that the rate for progress pay-  
22 ments on any contract awarded by the Secretary for re-  
23 pair, maintenance, or overhaul of a naval vessel shall be  
24 not less than—



1           “(A) 95 percent, in the case of firms considered  
2       to be small businesses; and

3           “(B) 90 percent, in the case of all other firms.

4           “(2) The Secretary of the Navy may advance to pri-  
5       vate salvage companies such funds as the Secretary con-  
6       siders necessary to provide for the immediate financing  
7       of salvage operations. Advances under this paragraph shall  
8       be made on terms that the Secretary considers adequate  
9       for the protection of the United States.

10          “(3) The Secretary of the Navy shall ensure that,  
11       when partial, progress, or other payments are made under  
12       a contract for construction or conversion of a naval vessel,  
13       the United States is secured by a lien upon work in  
14       progress and on property acquired for performance of the  
15       contract on account of all payments so made. The lien is  
16       paramount to all other liens.”.

17       (g) CONFORMING AND CLERICAL AMENDMENTS.—

18           (1) CROSS REFERENCE.—Such section, as  
19       amended by subsection (a), is further amended in  
20       subsections (c) and (d) by striking out “subsection  
21       (a)” and inserting in lieu thereof “subsection (b)”.

22           (2) TABLE OF CONTENTS.—The table of sec-  
23       tions at the beginning of chapter 137 of title 10,  
24       United States Code, is amended by striking out the

1 item relating to section 2307 and inserting in lieu  
2 thereof the following:

“2307. Contract financing.”.

3 (h) REPEAL OF SUPERSEDED PROVISIONS.—

4 (1) PROGRESS PAYMENTS UNDER CERTAIN  
5 NAVY CONTRACTS.—

6 (A) REPEAL.—Section 7312 of title 10,  
7 United States Code, is repealed.

8 (B) CLERICAL AMENDMENT.—The table of  
9 sections at the beginning of chapter 633 of such  
10 title is amended by striking out the item relat-  
11 ing to section 7312.

12 (2) ADVANCEMENT OF PAYMENTS FOR NAVY  
13 SALVAGE OPERATIONS.—

14 (A) REPEAL.—Section 7364 of such title is  
15 repealed.

16 (B) CLERICAL AMENDMENT.—The table of  
17 sections at the beginning of chapter 637 of such  
18 title is amended by striking out the item relat-  
19 ing to section 7364.

20 (3) PARTIAL PAYMENTS UNDER NAVY  
21 CONTRACTS—

22 (A) REPEAL.—Section 7521 of such title is  
23 repealed.

24 (B) CLERICAL AMENDMENT.—The table of  
25 sections at the beginning of chapter 645 of such

1 title is amended by striking out the item relat-  
2 ing to section 7521.

3 (4) NAVY RESEARCH CONTRACTS.—Section  
4 7522 of title 10, United States Code, is amended—

5 (A) by striking out subsection (b); and

6 (B) by redesignating subsection (c) as sub-  
7 section (b).

8 **SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.**

9 (a) REPEAL.—Section 2355 of title 10, United States  
10 Code, is repealed.

11 (b) CLERICAL AMENDMENT.—The table of sections  
12 at the beginning of chapter 139 of such title is amended  
13 by striking out the item relating to section 2355.

14 **PART II—CIVILIAN AGENCY ACQUISITIONS**

15 **SEC. 2051. CONTRACT FINANCING.**

16 (a) REORGANIZATION OF PRINCIPAL AUTHORITY  
17 PROVISION.—Section 305 of the Federal Property and  
18 Administrative Services Act of 1949 (41 U.S.C. 255) is  
19 amended—

20 (1) by striking out the section heading and in-  
21 serting in lieu thereof the following:

22 “CONTRACT FINANCING”;

23 (2) by striking out “(a) Any executive agency”  
24 and inserting in lieu thereof “(b) PAYMENT AU-  
25 THORITY.—Any executive agency”;

1           (3) by striking out “(b) Payments” and insert-  
2       ing in lieu thereof “(c) PAYMENT AMOUNT.—Pay-  
3       ments”; and

4           (4) by striking out “(c) Advance payments” and  
5       inserting in lieu thereof “(d) SECURITY FOR AD-  
6       VANCE PAYMENTS.—Advance payments”.

7       (b) FINANCING POLICY.—Such section, as amended  
8       by subsection (a), is further amended by inserting after  
9       the section heading the following new subsection (a):

10       “(a) POLICY.—Payments authorized under this sec-  
11       tion and made for financing purposes should be made peri-  
12       odically and in a timely manner to facilitate contract per-  
13       formance while protecting the security interests of the  
14       Government. Government financing shall be provided only  
15       to the extent necessary to ensure prompt and efficient per-  
16       formance and only after the availability of private financ-  
17       ing is considered. A contractor’s use of funds received as  
18       contract financing and the contractor’s financial condition  
19       shall be monitored. If the contractor is a small business  
20       concern, special attention shall be given to meeting the  
21       contractor’s financial need.”.

22       (c) TERMINOLOGY CORRECTION.—Such section, as  
23       amended by subsection (a)(2), is further amended in sub-  
24       section (b)(2) by striking out “bid”.



1 (d) EFFECTIVE DATE OF LIEN RELATED TO AD-  
2 VANCE PAYMENTS.—Such section, as amended by sub-  
3 section (a)(4), is further amended in subsection (d) by in-  
4 serting before the period at the end of the third sentence  
5 the following: “and is effective immediately upon the first  
6 advancement of funds without filing, notice, or any other  
7 action by the United States”.

8 (e) REVISION OF CIVILIAN AGENCY PROVISION TO  
9 ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-  
10 MENTS.—

11 (1) IN GENERAL.—Such section, as amended by  
12 subsection (a), is further amended by adding at the  
13 end the following:

14 “(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1)  
15 The agency head shall ensure that any payment for work  
16 in progress (including materials, labor, and other items)  
17 under a contract of an executive agency that provides for  
18 such payments is commensurate with the work accom-  
19 plished that meets standards established under the con-  
20 tract. The contractor shall provide such information and  
21 evidence as the agency head determines necessary to per-  
22 mit the agency head to carry out the preceding sentence.  
23 “(2) The agency head shall ensure that progress pay-  
24 ments referred to in paragraph (1) are not made for more  
25 than 80 percent of the work accomplished under the con-

1 tract so long as the agency head has not made the contrac-  
2 tual terms, specifications, and price definite.

3       “(3) This subsection applies to a contract for an  
4 amount equal to or greater than the simplified acquisition  
5 threshold.

6       “(f) ACTION IN CASE OF FRAUD.—(1) In any case  
7 in which the remedy coordination official of an executive  
8 agency finds that there is substantial evidence that the  
9 request of a contractor for advance, partial, or progress  
10 payment under a contract awarded by that executive agen-  
11 cy is based on fraud, the remedy coordination official shall  
12 recommend that the agency head reduce or suspend fur-  
13 ther payments to such contractor.

14       “(2) An agency head receiving a recommendation  
15 under paragraph (1) in the case of a contractor’s request  
16 for payment under a contract shall determine whether  
17 there is substantial evidence that the request is based on  
18 fraud. Upon making such a determination, the agency  
19 head may reduce or suspend further payments to the con-  
20 tractor under such contract.

21       “(3) The extent of any reduction or suspension of  
22 payments by an agency head under paragraph (2) on the  
23 basis of fraud shall be reasonably commensurate with the  
24 anticipated loss to the United States resulting from the  
25 fraud.

1       “(4) A written justification for each decision of the  
2 agency head whether to reduce or suspend payments  
3 under paragraph (2), and for each recommendation re-  
4 ceived by the agency head in connection with such deci-  
5 sion, shall be prepared and be retained in the files of the  
6 executive agency.

7       “(5) Each agency head shall prescribe procedures to  
8 ensure that, before the agency head decides to reduce or  
9 suspend payments in the case of a contractor under para-  
10 graph (2), the contractor is afforded notice of the pro-  
11 posed reduction or suspension and an opportunity to sub-  
12 mit matters to the head of the agency in response to such  
13 proposed reduction or suspension.

14       “(6) Not later than 180 days after the date on which  
15 an agency head reduces or suspends payments to a con-  
16 tractor under paragraph (2), the remedy coordination offi-  
17 cial of the executive agency shall—

18               “(A) review the determination of fraud on  
19 which the reduction or suspension is based; and

20               “(B) transmit a recommendation to the agency  
21 head whether the suspension or reduction should  
22 continue.

23       “(7) Each agency head who receives recommenda-  
24 tions made by a remedy coordination official of the execu-  
25 tive agency to reduce or suspend payments under para-

1 graph (2) during a fiscal year shall prepare for such year  
 2 a report that contains the recommendations, the actions  
 3 taken on the recommendations and the reasons for such  
 4 actions, and an assessment of the effects of such actions  
 5 on the Federal Government. Any such report shall be  
 6 available to any Member of Congress upon request.

7 “(8) An agency head may not delegate responsibilities  
 8 under this subsection to any person in a position below  
 9 level IV of the Executive Schedule.

10 “(9) In this subsection, the term ‘remedy coordina-  
 11 tion official’, with respect to an executive agency, means  
 12 the person or entity in that executive agency who coordi-  
 13 nates within that executive agency the administration of  
 14 criminal, civil, administrative, and contractual remedies  
 15 resulting from investigations of fraud or corruption related  
 16 to procurement activities.”.

17 (2) RELATIONSHIP TO PROMPT PAYMENT RE-  
 18 QUIREMENTS.—The amendments made by para-  
 19 graph (1) are not intended to impair or modify pro-  
 20 cedures required by the provisions of chapter 39 of  
 21 title 31, United States Code, and the regulations is-  
 22 sued pursuant to such provisions of law, that relate  
 23 to progress payment requests, as such procedures  
 24 are in effect on the date of the enactment of this  
 25 Act.



(f) CONFORMING AND CLERICAL AMENDMENTS.—

(1) REFERENCE.—Section 305 of the Federal Property and Administrative Services Act of 1949, as amended by subsection (a), is further amended in subsections (c) and (d) by striking out “subsection (a)” and inserting in lieu thereof “subsection (b)”.

(2) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by striking out the item relating to section 305 and inserting in lieu thereof the following:

“Sec. 305. Contract financing.”.

## **Subtitle B—Cost Principles**

### **PART I—ARMED SERVICES ACQUISITIONS**

#### **SEC. 2101. ALLOWABLE CONTRACT COSTS.**

(a) COMPTROLLER GENERAL EVALUATION.—Subsection (l) of section 2324 of title 10, United States Code, is amended to read as follows:

“(l)(1) The Comptroller General shall periodically evaluate the implementation of this section by the Secretary of Defense. Such evaluation shall consider the extent to which—

“(A) the implementation is consistent with congressional intent;

“(B) the implementation achieves the objective of eliminating unallowable costs charged to covered contracts; and

1           “(C) the implementation (as well as the provi-  
2           sions of this section and the regulations prescribed  
3           under this section) could be improved or strength-  
4           ened.

5           “(2) The Comptroller General shall submit to the  
6           Committees on Armed Services and the Committees on  
7           Appropriations of the Senate and House of Representa-  
8           tives a report on such evaluation within 90 days after pub-  
9           lication by the Secretary of Defense in the Federal Reg-  
10          ister of regulations that make substantive changes in regu-  
11          lations pertaining to allowable costs under covered con-  
12          tracts.”.

13          (b) COVERED CONTRACT DEFINED.—Subsection (m)  
14          of such section is amended to read as follows:

15          “(m) In this section, the term ‘covered contract’  
16          means a contract for an amount in excess of \$500,000  
17          that is entered into by the Department of Defense, except  
18          that such term does not include a fixed-price contract  
19          without cost incentives.”.

20          **SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMER-**  
21          **GENCY PERIODS.**

22          (a) REPEAL.—Section 2382 of title 10, United States  
23          Code, is repealed.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 141 of such title is amended  
3 by striking out the item relating to section 2382.

4 **PART II—CIVILIAN AGENCY ACQUISITIONS**

5 **SEC. 2151. ALLOWABLE CONTRACT COSTS.**

6 (a) REVISION OF CIVILIAN AGENCY PROVISION TO  
7 ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—  
8 Section 306 of the Federal Property and Administrative  
9 Services Act of 1949 (41 U.S.C. 256) is amended to read  
10 as follows:

11 “ALLOWABLE COSTS

12 “SEC. 306. (a) INDIRECT COST THAT VIOLATES A  
13 FAR COST PRINCIPLE.—The head of an executive agency  
14 shall require that a covered contract provide that if the  
15 contractor submits to the executive agency a proposal for  
16 settlement of indirect costs incurred by the contractor for  
17 any period after such costs have been accrued and if that  
18 proposal includes the submission of a cost which is unal-  
19 lowable because the cost violates a cost principle in the  
20 Federal Acquisition Regulation or an executive agency’s  
21 supplement to the Federal Acquisition Regulation, the cost  
22 shall be disallowed.

23 “(b) PENALTY FOR VIOLATION OF COST PRIN-  
24 CIPLE.—(1) If the agency head determines that a cost  
25 submitted by a contractor in its proposal for settlement  
26 is expressly unallowable under a cost principle referred to

1 in subsection (a) that defines the allowability of specific  
2 selected costs, the agency head shall assess a penalty  
3 against the contractor in an amount equal to—

4 “(A) the amount of the disallowed cost allo-  
5 cated to covered contracts for which a proposal for  
6 settlement of indirect costs has been submitted; plus

7 “(B) interest (to be computed based on regula-  
8 tions issued by the agency head) to compensate the  
9 United States for the use of any funds which a con-  
10 tractor has been paid in excess of the amount to  
11 which the contractor was entitled.

12 “(2) If the agency head determines that a proposal  
13 for settlement of indirect costs submitted by a contractor  
14 includes a cost determined to be unallowable in the case  
15 of such contractor before the submission of such proposal,  
16 the agency head shall assess a penalty against the contrac-  
17 tor in an amount equal to two times the amount of the  
18 disallowed cost allocated to covered contracts for which a  
19 proposal for settlement of indirect costs has been submit-  
20 ted.

21 “(c) WAIVER OF PENALTY.—The agency head shall  
22 prescribe regulations providing for a penalty under sub-  
23 section (b) to be waived in the case of a contractor’s pro-  
24 posal for settlement of indirect costs when—



1 “(1) the contractor withdraws the proposal be-  
2 fore the formal initiation of an audit of the proposal  
3 by the Federal Government and resubmits a revised  
4 proposal;

5 “(2) the amount of unallowable costs subject to  
6 the penalty is insignificant; or

7 “(3) the contractor demonstrates, to the con-  
8 tracting officer’s satisfaction, that—

9 “(A) it has established appropriate policies  
10 and personnel training and an internal control  
11 and review system that provide assurances that  
12 unallowable costs subject to penalties are pre-  
13 cluded from being included in the contractor’s  
14 proposal for settlement of indirect costs; and

15 “(B) the unallowable costs subject to the  
16 penalty were inadvertently incorporated into the  
17 proposal.

18 “(d) APPLICABILITY OF CONTRACT DISPUTES PRO-  
19 CEDURE TO DISALLOWANCE OF COST AND ASSESSMENT  
20 OF PENALTY.—An action of an agency head under sub-  
21 section (a) or (b)—

22 “(1) shall be considered a final decision for the  
23 purposes of section 6 of the Contract Disputes Act  
24 of 1978 (41 U.S.C. 605); and

1           “(2) is appealable in the manner provided in  
2           section 7 of such Act.

3           “(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The  
4           following costs are not allowable under a covered contract:

5           “(A) Costs of entertainment, including amuse-  
6           ment, diversion, and social activities, and any costs  
7           directly associated with such costs (such as tickets  
8           to shows or sports events, meals, lodging, rentals,  
9           transportation, and gratuities).

10          “(B) Costs incurred to influence (directly or in-  
11          directly) legislative action on any matter pending be-  
12          fore Congress or a State legislature.

13          “(C) Costs incurred in defense of any civil or  
14          criminal fraud proceeding or similar proceeding (in-  
15          cluding filing of any false certification) brought by  
16          the United States where the contractor is found lia-  
17          ble or had pleaded nolo contendere to a charge of  
18          fraud or similar proceeding (including filing of a  
19          false certification).

20          “(D) Payments of fines and penalties resulting  
21          from violations of, or failure to comply with, Fed-  
22          eral, State, local, or foreign laws and regulations, ex-  
23          cept when incurred as a result of compliance with  
24          specific terms and conditions of the contract or spe-  
25          cific written instructions from the contracting officer

1 authorizing in advance such payments in accordance  
2 with applicable regulations of the agency head con-  
3 cerned.

4 “(E) Costs of membership in any social, dining,  
5 or country club or organization.

6 “(F) Costs of alcoholic beverages.

7 “(G) Contributions or donations, regardless of  
8 the recipient.

9 “(H) Costs of advertising designed to promote  
10 the contractor or its products.

11 “(I) Costs of promotional items and memora-  
12 bilia, including models, gifts, and souvenirs.

13 “(J) Costs for travel by commercial aircraft  
14 which exceed the amount of the standard commercial  
15 fare.

16 “(K) Costs incurred in making any payment  
17 (commonly known as a ‘golden parachute payment’)  
18 which is—

19 “(i) in an amount in excess of the normal  
20 severance pay paid by the contractor to an em-  
21 ployee upon termination of employment; and

22 “(ii) is paid to the employee contingent  
23 upon, and following, a change in management  
24 control over, or ownership of, the contractor or  
25 a substantial portion of the contractor’s assets.

1           “(L) Costs of commercial insurance that pro-  
2       fects against the costs of the contractor for correc-  
3       tion of the contractor’s own defects in materials or  
4       workmanship.

5           “(M) Costs of severance pay paid by the con-  
6       tractor to foreign nationals employed by the contrac-  
7       tor under a service contract performed outside the  
8       United States, to the extent that the amount of sev-  
9       erance pay paid in any case exceeds the amount paid  
10      in the industry involved under the customary or pre-  
11      vailing practice for firms in that industry providing  
12      similar services in the United States, as determined  
13      under regulations prescribed by the agency head  
14      concerned.

15          “(N) Costs of severance pay paid by the con-  
16      tractor to a foreign national employed by the con-  
17      tractor under a service contract performed in a for-  
18      eign country if the termination of the employment of  
19      the foreign national is the result of the closing of,  
20      or the curtailment of activities at, a United States  
21      facility in that country at the request of the govern-  
22      ment of that country.

23          “(O) Costs incurred by a contractor in connec-  
24      tion with any criminal, civil, or administrative pro-



ceeding commenced by the United States or a State,  
to the extent provided in subsection (k).

“(2)(A) Pursuant to regulations prescribed by the  
head of the executive agency concerned and subject to the  
availability of appropriations, the agency head, in award-  
ing a covered contract, may waive the application of the  
provisions of paragraphs (1)(M) and (1)(N) to that con-  
tract if the agency head determines that—

“(i) the application of such provisions to the  
contract would adversely affect the continuation of a  
program, project, or activity that provides significant  
support services for employees of the executive agen-  
cy posted outside the United States;

“(ii) the contractor has taken (or has estab-  
lished plans to take) appropriate actions within the  
contractor’s control to minimize the amount and  
number of incidents of the payment of severance pay  
by the contractor to employees under the contract  
who are foreign nationals; and

“(iii) the payment of severance pay is necessary  
in order to comply with a law that is generally appli-  
cable to a significant number of businesses in the  
country in which the foreign national receiving the  
payment performed services under the contract or is

1       necessary to comply with a collective bargaining  
2       agreement.

3       “(B) The head of the executive agency concerned  
4       shall include in the solicitation for a covered contract a  
5       statement indicating—

6               “(i) that a waiver has been granted under sub-  
7       paragraph (A) for the contract; or

8               “(ii) whether the agency head will consider  
9       granting such a waiver, and, if the agency head will  
10      consider granting a waiver, the criteria to be used in  
11      granting the waiver.

12      “(C) The agency head shall make the final determina-  
13      tion regarding whether to grant a waiver under subpara-  
14      graph (A) with respect to a covered contract before award  
15      of the contract.

16      “(3) The head of each executive agency concerned  
17      shall prescribe regulations to implement this section with  
18      respect to contracts of that executive agency. Such regula-  
19      tions may establish appropriate definitions, exclusions,  
20      limitations, and qualifications.

21      “(f) REQUIRED REGULATIONS.—(1) The Federal Ac-  
22      quisition Regulation referred to in section 25(c)(1) of the  
23      Office of Federal Procurement Policy Act (41 U.S.C.  
24      421(c)(1)) shall contain provisions on the allowability of  
25      contractor costs. Such provisions shall define in detail and

1 in specific terms those costs which are unallowable, in  
2 whole or in part, under covered contracts. The regulations  
3 shall, at a minimum, clarify the cost principles applicable  
4 to contractor costs of the following:

5 “(A) Air shows.

6 “(B) Membership in civic, community, and pro-  
7 fessional organizations.

8 “(C) Recruitment.

9 “(D) Employee morale and welfare.

10 “(E) Actions to influence (directly or indirectly)  
11 executive branch action on regulatory and contract  
12 matters (other than costs incurred in regard to con-  
13 tract proposals pursuant to solicited or unsolicited  
14 bids).

15 “(F) Community relations.

16 “(G) Dining facilities.

17 “(H) Professional and consulting services, in-  
18 cluding legal services.

19 “(I) Compensation.

20 “(J) Selling and marketing.

21 “(K) Travel.

22 “(L) Public relations.

23 “(M) Hotel and meal expenses.

24 “(N) Expense of corporate aircraft.

25 “(O) Company-furnished automobiles.

1           “(P) Advertising.

2           “(2) The Federal Acquisition Regulation shall require  
3 that a contracting officer not resolve any questioned costs  
4 until the contracting officer has obtained—

5           “(A) adequate documentation with respect to  
6 such costs; and

7           “(B) the opinion of the executive agency’s con-  
8 tract auditor on the allowability of such costs.

9           “(3) The Federal Acquisition Regulation shall pro-  
10 vide that, to the maximum extent practicable, an executive  
11 agency’s contract auditor be present at any negotiation or  
12 meeting with the contractor regarding a determination of  
13 the allowability of indirect costs of the contractor.

14           “(4) The Federal Acquisition Regulation shall require  
15 that all categories of costs designated in the report of an  
16 executive agency’s contract auditor as questioned with re-  
17 spect to a proposal for settlement be resolved in such a  
18 manner that the amount of the individual questioned costs  
19 that are paid will be reflected in the settlement.

20           “(g) APPLICABILITY OF REQUIRED REGULATIONS.—  
21 The regulations required to be prescribed under sub-  
22 sections (e) and (f)(1) shall require, to the maximum ex-  
23 tent practicable, that such regulations apply to all sub-  
24 contractors of a covered contract.



1       “(h) CONTRACTOR CERTIFICATION REQUIRED.—(1)

2 A proposal for settlement of indirect costs applicable to  
3 a covered contract shall include a certification by an offi-  
4 cial of the contractor that, to the best of the certifying  
5 official’s knowledge and belief, all indirect costs included  
6 in the proposal are allowable. Any such certification shall  
7 be in a form prescribed by the agency head concerned.

8       “(2) The agency head concerned may, in an excep-  
9 tional case, waive the requirement for certification under  
10 paragraph (1) in the case of any contract if the agency  
11 head—

12               “(A) determines in such case that it would be  
13 in the interest of the United States to waive such  
14 certification; and

15               “(B) states in writing the reasons for that de-  
16 termination and makes such determination available  
17 to the public.

18       “(i) PENALTIES FOR SUBMISSION OF COST KNOWN  
19 AS NOT ALLOWABLE.—The submission to an executive  
20 agency of a proposal for settlement of costs for any period  
21 after such costs have been accrued that includes a cost  
22 that is expressly specified by statute or regulation as being  
23 unallowable, with the knowledge that such cost is unallow-  
24 able, shall be subject to the provisions of section 287 of

1 title 18, United States Code, and section 3729 of title 31,  
2 United States Code.

3 “(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—

4 In a proceeding before a board of contract appeals, the  
5 United States Court of Federal Claims, or any other Fed-  
6 eral court in which the reasonableness of indirect costs for  
7 which a contractor seeks reimbursement from the United  
8 States is in issue, the burden of proof shall be upon the  
9 contractor to establish that those costs are reasonable.

10 “(k) PROCEEDING COSTS NOT ALLOWABLE.—(1)

11 Except as otherwise provided in this subsection, costs in-  
12 curred by a contractor in connection with any criminal,  
13 civil, or administrative proceeding commenced by the  
14 United States or a State are not allowable as reimbursable  
15 costs under a covered contract if the proceeding (A) re-  
16 lates to a violation of, or failure to comply with, a Federal  
17 or State statute or regulation, and (B) results in a disposi-  
18 tion described in paragraph (2).

19 “(2) A disposition referred to in paragraph (1)(B) is  
20 any of the following:

21 “(A) In the case of a criminal proceeding, a  
22 conviction (including a conviction pursuant to a plea  
23 of nolo contendere) by reason of the violation or fail-  
24 ure referred to in paragraph (1).

1           “(B) In the case of a civil or administrative  
2           proceeding involving an allegation of fraud or similar  
3           misconduct, a determination of contractor liability  
4           on the basis of the violation or failure referred to in  
5           paragraph (1).

6           “(C) In the case of any civil or administrative  
7           proceeding, the imposition of a monetary penalty by  
8           reason of the violation or failure referred to in para-  
9           graph (1).

10          “(D) A final decision—

11               “(i) to debar or suspend the contractor,

12               “(ii) to rescind or void the contract, or

13               “(iii) to terminate the contract for default,  
14           by reason of the violation or failure referred to in  
15           paragraph (1).

16          “(E) A disposition of the proceeding by consent  
17           or compromise if such action could have resulted in  
18           a disposition described in subparagraph (A), (B),  
19           (C), or (D).

20          “(3) In the case of a proceeding referred to in para-  
21       graph (1) that is commenced by the United States and  
22       is resolved by consent or compromise pursuant to an  
23       agreement entered into by a contractor and the United  
24       States, the costs incurred by the contractor in connection  
25       with such proceeding that are otherwise not allowable as

1 reimbursable costs under such paragraph may be allowed  
2 to the extent specifically provided in such agreement.

3       “(4) In the case of a proceeding referred to in para-  
4 graph (1) that is commenced by a State, the agency head  
5 that awarded the covered contract involved in the proceed-  
6 ing may allow the costs incurred by the contractor in con-  
7 nection with such proceeding as reimbursable costs if the  
8 agency head determines, under regulations prescribed by  
9 such agency head, that the costs were incurred as a result  
10 of (A) a specific term or condition of the contract, or (B)  
11 specific written instructions of the agency.

12       “(5)(A) Except as provided in subparagraph (C),  
13 costs incurred by a contractor in connection with a crimi-  
14 nal, civil, or administrative proceeding commenced by the  
15 United States or a State in connection with a covered con-  
16 tract may be allowed as reimbursable costs under the con-  
17 tract if such costs are not disallowable under paragraph  
18 (1), but only to the extent provided in subparagraph (B).

19       “(B)(i) The amount of the costs allowable under sub-  
20 paragraph (A) in any case may not exceed the amount  
21 equal to 80 percent of the amount of the costs incurred,  
22 to the extent that such costs are determined to be other-  
23 wise allowable and allocable under the Federal Acquisition  
24 Regulation.



1       “(ii) Regulations issued for the purpose of clause (i)  
2 shall provide for appropriate consideration of the complex-  
3 ity of procurement litigation, generally accepted principles  
4 governing the award of legal fees in civil actions involving  
5 the United States as a party, and such other factors as  
6 may be appropriate.

7       “(C) In the case of a proceeding referred to in sub-  
8 paragraph (A), contractor costs otherwise allowable as re-  
9 imburseable costs under this paragraph are not allowable  
10 if (i) such proceeding involves the same contractor mis-  
11 conduct alleged as the basis of another criminal, civil, or  
12 administrative proceeding, and (ii) the costs of such other  
13 proceeding are not allowable under paragraph (1).

14       “(6) In this subsection:

15               “(A) The term ‘proceeding’ includes an inves-  
16 tigation.

17               “(B) The term ‘costs’, with respect to a  
18 proceeding—

19                       “(i) means all costs incurred by a contrac-  
20 tor, whether before or after the commencement  
21 of any such proceeding; and

22                       “(ii) includes—

23                               “(I) administrative and clerical ex-  
24 penses;

1                   “(II) the cost of legal services, includ-  
2                   ing legal services performed by an em-  
3                   ployee of the contractor;

4                   “(III) the cost of the services of ac-  
5                   countants and consultants retained by the  
6                   contractor; and

7                   “(IV) the pay of directors, officers,  
8                   and employees of the contractor for time  
9                   devoted by such directors, officers, and em-  
10                  ployees to such proceeding.

11               “(C) The term ‘penalty’ does not include res-  
12               titution, reimbursement, or compensatory damages.

13               “(I) PERIODIC EVALUATION OF IMPLEMENTATION.—

14               (1) The Comptroller General shall periodically evaluate  
15               the implementation of this section by the heads of execu-  
16               tive agencies. Such evaluation shall consider the extent to  
17               which—

18               “(A) the implementation is consistent with con-  
19               gressional intent;

20               “(B) the implementation achieves the objective  
21               of eliminating unallowable costs charged to covered  
22               contracts; and

23               “(C) the implementation (as well as the provi-  
24               sions of this section and the regulations prescribed

1 under this section) could be improved or strength-  
2 ened.

3 “(2) The Comptroller General shall submit to the  
4 Committees on Governmental Affairs and on Appropria-  
5 tions of the Senate and the Committees on Government  
6 Operation and on Appropriations of the House of Rep-  
7 resentatives a report on such evaluation within 90 days  
8 after the head of any executive agency publishes in the  
9 Federal Register regulations that make substantive  
10 changes in regulations pertaining to allowable costs under  
11 covered contracts.

12 “(m) COVERED CONTRACT DEFINED.—In this sec-  
13 tion, the term ‘covered contract’ means a contract for an  
14 amount in excess of \$500,000 that is entered into by an  
15 executive agency, except that such term does not include  
16 a fixed-price contract without cost incentives.”.

17 (b) CLERICAL AMENDMENT.—The table of contents  
18 in the first section of such Act is amended by striking out  
19 the item relating to section 306 and inserting in lieu there-  
20 of the following:

“Sec. 306. Allowable costs.”.

## 21 **PART III—ACQUISITIONS GENERALLY**

### 22 **SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-** 23 **TORS.**

24 Section 24 of the Office of Federal Procurement Pol-  
25 icy Act (41 U.S.C. 420) is repealed.

1     **Subtitle C—Audit and Access to**  
2                     **Records**

3             **PART I—ARMED SERVICES ACQUISITIONS**

4     **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY**  
5                     **TO EXAMINE RECORDS OF CONTRACTORS.**

6             (a) **AUTHORITY.—**

7                 (1) **IN GENERAL.**—Section 2313 of title 10,  
8             United States Code, is amended to read as follows:

9     **“§ 2313. Examination of records of contractor**

10             “(a) **AGENCY AUTHORITY.**—The head of an agency,  
11     acting through an authorized representative—

12                 “(1) is entitled to inspect the plant and audit  
13     the records of—

14                 “(A) a contractor performing a cost-reim-  
15     bursement, incentive, time-and-materials, labor-  
16     hour, or price-redeterminable contract, or any  
17     combination of such contracts, made by that  
18     agency under this chapter; and

19                 “(B) a subcontractor performing any sub-  
20     contract under such a contract or combination  
21     of contracts; and

22                 “(2) shall, for the purpose of evaluating the ac-  
23     curacy, completeness, and currency of cost or pricing  
24     data required to be submitted pursuant to section  
25     2306a of this title with respect to a contract or sub-



1 contract, have the right to examine all records of the  
2 contractor or subcontractor related to—

3 “(A) the proposal for the contract or sub-  
4 contract;

5 “(B) the discussions conducted on the pro-  
6 posal;

7 “(C) pricing of the contract or subcontract;  
8 or

9 “(D) performance of the contract or sub-  
10 contract.

11 “(b) SUBPOENA POWER.—(1) The Director of the  
12 Defense Contract Audit Agency (or any successor agency)  
13 may require by subpoena the production of records of a  
14 contractor, access to which is provided to the Secretary  
15 of Defense by subsection (a).

16 “(2) Any such subpoena, in the case of contumacy  
17 or refusal to obey, shall be enforceable by order of an ap-  
18 propriate United States district court.

19 “(3) The authority provided by paragraph (1) may  
20 not be redelegated.

21 “(4) The Director (or any successor official) shall  
22 submit an annual report to the Secretary of Defense on  
23 the exercise of such authority during the preceding year  
24 and the reasons why such authority was exercised in any  
25 instance. The Secretary shall forward a copy of each such

1 report to the Committees on Armed Services of the Senate  
2 and House of Representatives.

3 “(c) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-  
4 cept as provided in paragraph (2), each contract awarded  
5 after using procedures other than sealed bid procedures  
6 shall provide that the Comptroller General and his rep-  
7 resentatives are entitled to examine any records of the  
8 contractor, or any of its subcontractors, that directly per-  
9 tain to, and involve transactions relating to, the contract  
10 or subcontract.

11 “(2) Paragraph (1) does not apply to a contract or  
12 subcontract with a foreign contractor or foreign sub-  
13 contractor if the head of the agency concerned determines,  
14 with the concurrence of the Comptroller General or his  
15 designee, that the application of that paragraph to the  
16 contract or subcontract would not be in the public interest.  
17 However, the concurrence of the Comptroller General or  
18 his designee is not required—

19 “(A) where the contractor or subcontractor is a  
20 foreign government or agency thereof or is precluded  
21 by the laws of the country involved from making its  
22 records available for examination; and

23 “(B) where the head of the agency determines,  
24 after taking into account the price and availability of  
25 the property and services from United States

sources, that the public interest would be best served by not applying paragraph (1).

“(d) LIMITATION.—The right of the head of an agency under subsection (a), and the right of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

“(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:

“(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

“(f) RECORDS DEFINED.—In this section, the term ‘records’ includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.”.

(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 137 of title 10, United States Code, is amended to read as follows:

“2313. Examination of records of contractor.”.

(b) REPEAL OF SUPERSEDED PROVISION.—

1           (1) REPEAL.—Section 2406 of title 10, United  
2 States Code, is repealed.

3           (2) CLERICAL AMENDMENT.—The table of sec-  
4 tions at the beginning of chapter 141 of such title  
5 is amended by striking out the item relating to sec-  
6 tion 2406.

## 7       **PART II—CIVILIAN AGENCY ACQUISITIONS**

### 8       **SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CON-** 9                               **TRACTORS.**

10       (a) AUTHORITY.—

11           (1) IN GENERAL.—Title III of the Federal  
12 Property and Administrative Services Act of 1949  
13 (41 U.S.C. 251 et seq.), as amended by section  
14 1251(a), is further amended by inserting after sec-  
15 tion 304A the following new section:

16           “EXAMINATION OF RECORDS OF CONTRACTOR

17           “SEC. 304B. (a) AGENCY AUTHORITY.—The head of  
18 an executive agency, acting through an authorized  
19 representative—

20           “(1) is entitled to inspect the plant and audit  
21 the records of—

22           “(A) a contractor performing a cost-reim-  
23 bursement, incentive, time-and-materials, labor-  
24 hour, or price-redeterminable contract, or any  
25 combination of such contracts, made by that ex-  
26 ecutive agency under this title; and



1           “(B) a subcontractor performing any sub-  
2           contract under such a contract or combination  
3           of contracts; and

4           “(2) shall, for the purpose of evaluating the ac-  
5           curacy, completeness, and currency of cost or pricing  
6           data required to be submitted pursuant to section  
7           304A with respect to a contract or subcontract, have  
8           the right to examine all records of the contractor or  
9           subcontractor related to—

10           “(A) the proposal for the contract or sub-  
11           contract;

12           “(B) the discussions conducted on the pro-  
13           posal;

14           “(C) pricing of the contract or subcontract;  
15           or

16           “(D) performance of the contract or sub-  
17           contract.

18           “(b) SUBPOENA POWER.—(1) The agency head may  
19           require by subpoena the production of records of a con-  
20           tractor, access to which is provided by subsection (a).

21           “(2) Any such subpoena, in the case of contumacy  
22           or refusal to obey, shall be enforceable by order of an ap-  
23           propriate United States district court.

24           “(3) The authority provided by paragraph (1) may  
25           not be delegated.

1       “(4) In the year following a year in which the head  
2 of an executive agency exercises the authority provided in  
3 paragraph (1), the agency head shall submit to the Com-  
4 mittee on Governmental Affairs of the Senate and the  
5 Committee on Government Operations of the House of  
6 Representatives a report on the exercise of such authority  
7 during such preceding year and the reasons why such au-  
8 thority was exercised in any instance.

9       “(c) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-  
10 cept as provided in paragraph (2), each contract awarded  
11 after using procedures other than sealed bid procedures  
12 shall provide that the Comptroller General and his rep-  
13 resentatives are entitled to examine any records of the  
14 contractor, or any of its subcontractors, that directly per-  
15 tain to, and involve transactions relating to, the contract  
16 or subcontract.

17       “(2) Paragraph (1) does not apply to a contract or  
18 subcontract with a foreign contractor or foreign sub-  
19 contractor if the agency head concerned determines, with  
20 the concurrence of the Comptroller General or his des-  
21 ignee, that the application of that paragraph to the con-  
22 tract or subcontract would not be in the public interest.  
23 However, the concurrence of the Comptroller General or  
24 his designee is not required—

1           “(A) where the contractor or subcontractor is a  
2 foreign government or agency thereof or is precluded  
3 by the laws of the country involved from making its  
4 records available for examination; and

5           “(B) where the agency head determines, after  
6 taking into account the price and availability of the  
7 property and services from United States sources,  
8 that the public interest would be best served by not  
9 applying paragraph (1).

10          “(d) LIMITATION.—The right of an agency head  
11 under subsection (a), and the right of the Comptroller  
12 General under subsection (c), with respect to a contract  
13 or subcontract shall expire three years after final payment  
14 under such contract or subcontract.

15          “(e) INAPPLICABILITY TO CERTAIN CONTRACTS.—  
16 This section is inapplicable with respect to the following  
17 contracts:

18           “(1) Contracts for utility services at rates not  
19 exceeding those established to apply uniformly to the  
20 public, plus any applicable reasonable connection  
21 charge.

22          “(f) RECORDS DEFINED.—In this section, the term  
23 ‘records’ includes books, documents, accounting proce-  
24 dures and practices, and other data, regardless of type and

1 regardless of whether such items are in written form, in  
2 the form of computer data, or in any other form.”.

3 (2) CLERICAL AMENDMENT.—The table of con-  
4 tents in the first section of such Act, as amended by  
5 section 1251(b), is further amended by inserting  
6 after the item relating to section 304A the following:  
“Sec. 304B. Examination of records of contractor.”.

7 (b) REPEAL OF SUPERSEDED PROVISION.—Section  
8 304 of the Federal Property and Administrative Services  
9 Act of 1949 (41 U.S.C. 254) is amended by striking out  
10 subsection (c).

## 11 **Subtitle D—Cost Accounting** 12 **Standards**

### 13 **SEC. 2301. REPEAL OF OBSOLETE DEADLINE REGARDING** 14 **PROCEDURAL REGULATIONS FOR THE COST** 15 **ACCOUNTING STANDARDS BOARD.**

16 Section 26(f)(3) of the Office of Federal Procurement  
17 Policy Act (41 U.S.C. 422(f)(3)) is amended in the first  
18 sentence by striking out “Not later than 180 days after  
19 the date of the enactment of this section, the Adminis-  
20 trator” and inserting in lieu thereof “The Administrator”.



1 **Subtitle E—Administration of Con-**  
2 **tract Provisions Relating to**  
3 **Price, Delivery, and Product**  
4 **Quality**

5 **PART I—ARMED SERVICES ACQUISITIONS**

6 **SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND**  
7 **SHIP SPARE PARTS; QUALITY CONTROL.**

8 (a) **REPEAL.**—Section 2383 of title 10, United States  
9 Code, is repealed.

10 (b) **CLERICAL AMENDMENT.**—The table of sections  
11 at the beginning of chapter 141 of such title is amended  
12 by striking out the item relating to section 2383.

13 **SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-**  
14 **ON SYSTEMS.**

15 Section 2403(h) of title 10, United States Code, is  
16 amended—

17 (1) by redesignating paragraph (2) as para-  
18 graph (3); and

19 (2) by inserting after paragraph (1) the follow-  
20 ing new paragraph (2):

21 “(2) The regulations shall include the following:

22 “(A) Guidelines for negotiating contractor guar-  
23 antees that are reasonable and cost effective, as de-  
24 termined on the basis of the likelihood of defects and  
25 the estimated cost of correcting such defects.

1           “(B) Procedures for administering contractor  
2       guarantees.

3           “(C) Guidelines for determining the cases in  
4       which it may be appropriate to waive the require-  
5       ments of this section.”.

6   **SEC. 2403. REPEAL OF REQUIREMENT FOR COMPLETE DE-**  
7                   **LIVERY OF SUBSISTENCE SUPPLIES AT SPE-**  
8                   **CIFIC PLACE UPON INSPECTION.**

9       (a) ARMY CONTRACTS.—

10           (1) REPEAL.—Section 4534 of title 10, United  
11       States Code, is repealed.

12           (2) CLERICAL AMENDMENT.—The table of sec-  
13       tions at the beginning of chapter 433 of such title  
14       is amended by striking out the item relating to sec-  
15       tion 4534.

16       (b) AIR FORCE CONTRACTS.—

17           (1) REPEAL.—Section 9534 of title 10, United  
18       States Code, is repealed.

19           (2) CLERICAL AMENDMENT.—The table of sec-  
20       tions at the beginning of chapter 933 of such title  
21       is amended by striking out the item relating to sec-  
22       tion 9534.

**PART II—ACQUISITIONS GENERALLY**

**SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EXPANSION OF AUTHORITY TO PROHIBIT SETOFFS AGAINST ASSIGNEES; REORGANIZATION OF SECTION; REVISION OF OBSOLETE PROVISIONS.**

Section 3737 of the Revised Statutes (41 U.S.C. 15) is amended to read as follows:

“SEC. 3737. (a) No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

“(b) The provisions of subsection (a) shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, provided:

“(1) That, in the case of any contract entered into after October 9, 1940, no claim shall be as-

1 signed if it arises under a contract which forbids  
2 such assignment;

3 “(2) That, unless otherwise expressly permitted  
4 by such contract, any such assignment shall cover all  
5 amounts payable under such contract and not al-  
6 ready paid, shall not be made to more than one  
7 party, and shall not be subject to further assign-  
8 ment, except that any such assignment may be made  
9 to one party as agent or trustee for two or more  
10 parties participating in such financing;

11 “(3) That, in the event of any such assignment,  
12 the assignee thereof shall file written notice of the  
13 assignment together with a true copy of the instru-  
14 ment of the assignment with—

15 “(A) the contracting officer or the head of  
16 his department or agency;

17 “(B) the surety or sureties upon the bond  
18 or bonds, if any, in connection with such con-  
19 tract; and

20 “(C) the disbursing officer, if any, des-  
21 ignated in such contract to make payment.

22 “(c) Notwithstanding any law to the contrary govern-  
23 ing the validity of assignments, any assignment pursuant  
24 to this section shall constitute a valid assignment for all  
25 purposes.



1       “(d) In any case in which moneys due or to become  
2 due under any contract are or have been assigned pursu-  
3 ant to this section, no liability of any nature of the as-  
4 signor to the United States or any department or agency  
5 thereof, whether arising from or independently of such  
6 contract, shall create or impose any liability on the part  
7 of the assignee to make restitution, refund, or repayment  
8 to the United States of any amount heretofore since July  
9 1, 1950, or hereafter received under the assignment.

10       “(e) Any contract of the Department of Defense, the  
11 General Services Administration, the Department of En-  
12 ergy, or any other department or agency of the United  
13 States designated by the President, except any such con-  
14 tract under which full payment has been made, may, upon  
15 a determination of need by the President, provide or be  
16 amended without consideration to provide that payments  
17 to be made to the assignee of any moneys due or to become  
18 due under such contract shall not be subject to reduction  
19 or setoff.

20       “(f) If a provision described in subsection (e) or a  
21 provision to the same general effect has been at any time  
22 heretofore or is hereafter included or inserted in any such  
23 contract, payments to be made thereafter to an assignee  
24 of any moneys due or to become due under such contract  
25 shall not be subject to reduction or setoff for any liability

1 of any nature of the assignor to the United States or any  
2 department or agency thereof which arises independently  
3 of such contract, or hereafter for any liability of the as-  
4 signor on account of—

5 “(1) renegotiation under any renegotiation stat-  
6 ute or under any statutory renegotiation article in  
7 the contract;

8 “(2) fines;

9 “(3) penalties (which term does not include  
10 amounts which may be collected or withheld from  
11 the assignor in accordance with or for failure to  
12 comply with the terms of the contract); or

13 “(4) taxes, social security contributions, or the  
14 withholding or non withholding of taxes or social se-  
15 curity contributions, whether arising from or inde-  
16 pendently of such contract.

17 “(g) Except as herein otherwise provided, nothing in  
18 this section shall be deemed to affect or impair rights of  
19 obligations heretofore accrued.”.

20 **SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF**  
21 **CONTRACTS WITH GAO.**

22 Section 3743 of the Revised Statutes (41 U.S.C. 20)  
23 is repealed.

# **Subtitle F—Claims and Disputes**

## **PART I—ARMED SERVICES ACQUISITIONS**

### **SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.**

(a) DoD CERTIFICATION REQUIREMENT IN CONFLICT WITH GOVERNMENT-WIDE REQUIREMENT.—

(1) REPEAL.—Section 2410 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2410.

(b) REPEAL OF SUPERSEDED PROVISION.—Section 813(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2453), is repealed.

(c) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—Section 2310e of title 10, United States Code, is amended by adding at the end the following new subsection:

“(d) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1993, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such con-

1 tract, or a particular request for relief under Public Law  
 2 85–804 (50 U.S.C. 1431 et seq.) regarding such contract  
 3 may be implemented unless such provision of law—

4 “(1) specifically refers to this subsection; and

5 “(2) specifically states that this subsection does  
 6 not apply with respect to the payment directed by  
 7 that provision of law.”.

## 8 **PART II—ACQUISITIONS GENERALLY**

### 9 **SEC. 2551. CONCURRENT JURISDICTION OF UNITED** 10 **STATES DISTRICT COURTS UNDER THE LIT-** 11 **TLE TUCKER ACT.**

12 Subsection (a) of section 1346 of title 28, United  
 13 States Code, is amended to read as follows:

14 “(a)(1) The district courts shall have original juris-  
 15 diction, concurrent with the United States Court of Fed-  
 16 eral Claims, of any civil action against the United States  
 17 for the recovery of any internal-revenue tax alleged to have  
 18 been erroneously or illegally assessed or collected, or any  
 19 penalty claimed to have been collected without authority  
 20 or any sum alleged to have been excessive or in any man-  
 21 ner wrongfully collected under the internal-revenue laws.

22 “(2)(A) Except as provided in subparagraph (B), the  
 23 district courts shall have original jurisdiction, concurrent  
 24 with the United States Court of Federal Claims, of any  
 25 other civil action or claim against the United States, not



1 exceeding \$10,000 in amount, founded either upon the  
2 Constitution, or any Act of Congress, or any regulation  
3 of an executive department, or upon any express or im-  
4 plied contract with the United States, or for liquidated or  
5 unliquidated damages in cases not sounding in tort.

6 “(B) The district courts shall not have jurisdiction  
7 over any civil action or claim against the United States  
8 which relates in any manner to a contract to which the  
9 Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)  
10 applies, including a claim that seeks to establish the exist-  
11 ence or nonexistence of such a contract, seeks to establish  
12 that such a contract is void, or seeks to determine and  
13 construe the terms of such a contract. The district courts  
14 do not have jurisdiction over any civil action or claim de-  
15 scribed in the preceding sentence pursuant to section 1331  
16 or 1334 of this title or any other provision of law.”.

17 **SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.**

18 (a) PERIOD FOR FILING CLAIMS.—Section 6 of the  
19 Contract Disputes Act of 1978 (41 U.S.C. 605) is amend-  
20 ed in subsection (a) by inserting after the second sentence  
21 the following: “Each claim by a contractor against the  
22 government relating to a contract and each claim by the  
23 government against a contractor relating to a contract  
24 shall be submitted within 6 years after the occurrence of  
25 the event or events giving rise to the claim.”.

1 (b) INCREASED THRESHOLD FOR CERTIFICATION,  
2 DECISION, AND NOTIFICATION REQUIREMENTS.—Sub-  
3 section (c) of such section is amended by striking out  
4 “\$50,000” each place it appears and inserting in lieu  
5 thereof “\$100,000”.

6 (c) INCREASED MAXIMUM FOR APPLICABILITY OF  
7 SMALL CLAIMS PROCEDURE.—Section 9(a) of the Con-  
8 tract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended  
9 by striking out “\$10,000” in the first sentence and insert-  
10 ing in lieu thereof “\$25,000”.

11 (d) REDUCED PERIOD FOR FILING ACTION IN  
12 COURT OF FEDERAL CLAIMS.—Section 10(a)(3) of such  
13 Act (41 U.S.C. 609(a)(3)) is amended by striking out  
14 “twelve months” and inserting in lieu thereof “90 days”.

15 (e) CLAIM DEFINED.—Section 2 of such Act (41  
16 U.S.C. 601) is amended—

17 (1) by striking out “and” at the end of para-  
18 graph (6);

19 (2) by striking out the period at the end of  
20 paragraph (7) and inserting in lieu thereof “; and”;  
21 and

22 (3) by adding at the end the following new  
23 paragraph:

24 “(8) the term ‘claim’ includes a request for eq-  
25 uitable adjustment to contract terms and a request

for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.).”.

### **TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES**

#### **Subtitle A—Major Systems Statutes**

#### **SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTIMATES AND MANPOWER ESTIMATES BEFORE DEVELOPMENT OR PRODUCTION.**

##### **(a) CONTENT AND SUBMISSION OF ESTIMATES.—**

Section 2434 of title 10, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following:

“(b) REGULATIONS.—The Secretary of Defense shall promulgate regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

“(1) that the independent estimate of the cost of a program—

“(A) be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and

1           “(B) include all costs of development, pro-  
 2           curement, and operations and support, without  
 3           regard to funding source or management con-  
 4           trol; and

5           “(2) that the manpower estimate include the  
 6           total personnel required to operate, maintain, and  
 7           support the program upon full operational deploy-  
 8           ment.”.

9           (b) **TERMINOLOGY CORRECTION.**—Subsection (a) of  
 10          such section is amended by striking out “full-scale engi-  
 11          neering development” and inserting in lieu thereof “engi-  
 12          neering and manufacturing development”.

13          **SEC. 3002. ENHANCED PROGRAM STABILITY.**

14          (a) **BASLINE DESCRIPTIONS AND DEVIATION RE-**  
 15          **PORTING.**—Section 2435 of title 10, United States Code,  
 16          is amended—

17                 (1) in subsection (a)—

18                         (A) by striking out paragraph (2); and

19                         (B) in paragraph (1)—

20                                 (i) by striking out “(1)”; and

21                                 (ii) by redesignating subparagraphs

22                                 (A) and (B) as paragraphs (1) and (2), re-  
 23                                 spectively; and

24                 (2) by striking out subsection (b) and inserting  
 25                 in lieu thereof the following:



1 “(b) REGULATIONS.—The Secretary of Defense shall  
2 promulgate regulations governing—

3 “(1) the content of baseline descriptions;

4 “(2) the submission of reports on deviations of  
5 a program from the baseline description by the pro-  
6 gram manager to the Secretary of the military de-  
7 partment concerned and the Under Secretary of De-  
8 fense for Acquisition;

9 “(3) procedures for review of deviation reports  
10 within the Department of Defense; and

11 “(4) procedures for submission and approval of  
12 revised baseline descriptions.”.

13 (b) TERMINOLOGY CORRECTION.—Subsection (a)(1)  
14 of such section, as redesignated by subsection  
15 (a)(1)(B)(ii), is amended by striking out “full-scale engi-  
16 neering development” and inserting in lieu thereof “engi-  
17 neering and manufacturing development”.

18 **SEC. 3003. REPEAL OF REQUIREMENT FOR DEFENSE EN-**  
19 **TERPRISE PROGRAMS.**

20 (a) AUTHORITY.—

21 (1) REPEAL.—Sections 2436 and 2437 of title  
22 10, United States Code, are repealed.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions at the beginning of chapter 144 of such title

1 is amended by striking out the items relating to sec-  
2 tions 2436 and 2437.

3 (b) CONFORMING AMENDMENT.—Section 809 of the  
4 National Defense Authorization Act for Fiscal Year 1991  
5 (Public Law 101–510; 10 U.S.C. 2430 note) is  
6 amended—

7 (1) by striking out subsection (d); and

8 (2) by redesignating subsections (e), (f), (g),  
9 and (h) as subsections (d), (e), (f), and (g), respec-  
10 tively.

11 **SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE**  
12 **PROTOTYPING IN MAJOR PROGRAMS.**

13 (a) REPEAL.—Section 2438 of title 10, United States  
14 Code, is repealed.

15 (b) CLERICAL AMENDMENT.—The table of sections  
16 at the beginning of chapter 144 of such title is amended  
17 by striking out the item relating to section 2438.

18 **SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE**  
19 **ALTERNATIVE SOURCES IN MAJOR PRO-**  
20 **GRAMS.**

21 (a) REPEAL.—Section 2439 of title 10, United States  
22 Code, is repealed.

23 (b) CLERICAL AMENDMENT.—The table of sections  
24 at the beginning of chapter 144 of such title is amended  
25 by striking out the item relating to section 2439.

## **Subtitle B—Testing Statutes**

### **SEC. 3011. REPEAL OF TESTING REQUIREMENT FOR WHEELED OR TRACKED VEHICLES.**

(a) **REPEAL.**—Section 2362 of title 10, United States Code, is repealed.

(b) **TECHNICAL AMENDMENT.**—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item relating to section 2362.

### **SEC. 3012. MAJOR SYSTEMS AND MUNITIONS PROGRAMS: SURVIVABILITY AND LETHALITY TESTING.**

(a) **SUBSTITUTION OF VULNERABILITY TESTING FOR  
SURVIVABILITY TESTING.**—Section 2366 of title 10, United States Code, is amended—

(1) by striking out “survivability” each place it appears in subsections (a)(1)(A), (a)(2)(A), (c)(1), (d), (e)(3), and (e)(6)(A) and inserting in lieu thereof “vulnerability”; and

(2) in subsection (b)(1), by striking out “Survivability” and inserting in lieu thereof “Vulnerability”.

(b) **LESS THAN FULL-UP TESTING AUTHORIZED.**—Section 2366(e)(3) of such title is amended by inserting after “configured for combat,” the following: “or, if the covered system is a high value system, by firing such munitions at components, subsystems, and subassemblies (or

1 realistic replicas or surrogates) together with performing  
 2 design analyses, modeling and simulation, and analysis of  
 3 combat data,”.

4 (c) WAIVER AUTHORITY AFTER FULL-SCALE DE-  
 5 VELOPMENT BEGINS.—Section 2366(c)(1) of such title is  
 6 amended in the first sentence by striking out “, before  
 7 the system enters full-scale development,”.

8 (d) REFERENCE TO CONGRESSIONAL COMMIT-  
 9 TEES.—Section 2366(d) of such title is amended in the  
 10 first sentence by striking out “defense committees of Con-  
 11 gress (as defined in section 2362(e)(3) of this title)” and  
 12 inserting in lieu thereof “Committees on Armed Services  
 13 and on Appropriations of the Senate and House of Rep-  
 14 resentatives”.

15 **SEC. 3013. OPERATIONAL TEST AND EVALUATION OF DE-**  
 16 **FENSE ACQUISITION PROGRAMS.**

17 Section 2399(b) of title 10, United States Code, is  
 18 amended—

19 (1) by redesignating paragraph (5) as para-  
 20 graph (6); and

21 (2) by inserting after paragraph (4) the follow-  
 22 ing new paragraph (5):

23 “(5)(A) The Secretary of Defense may, for a particu-  
 24 lar major defense acquisition program, prescribe and apply  
 25 different operational test and evaluation procedures than



1 those provided under subsection (a) and paragraphs (1)  
 2 through (3) of this subsection if the Secretary first trans-  
 3 mits to Congress—

4 “(i) a certification that such testing would be  
 5 unreasonably expensive and impracticable, cause un-  
 6 warranted delay, or be unnecessary because of the  
 7 acquisition strategy for that system; and

8 “(ii) a description of the actions taken to en-  
 9 sure that the system will be operationally effective  
 10 and suitable when the system is introduced into the  
 11 field.

12 “(B) Alternative operational test and evaluation pro-  
 13 cedures prescribed pursuant to subparagraph (A) may not  
 14 be used to proceed with a major defense acquisition pro-  
 15 gram beyond low-rate initial production.”.

16 **SEC. 3014. LOW-RATE INITIAL PRODUCTION OF NEW SYS-**  
 17 **TEMS.**

18 (a) **EXCEPTION FOR STRATEGIC DEFENSE MISSILE**  
 19 **SYSTEMS.**—Subsection (c) of section 2400 of title 10,  
 20 United States Code, is amended to read as follows—

21 (1) in paragraph (1), by striking out “and mili-  
 22 tary satellite programs” and inserting in lieu thereof  
 23 “, military satellite programs, and strategic defense  
 24 missile programs”;

1           (2) in paragraph (2), by striking out “and mili-  
 2       tary satellite program” and inserting in lieu thereof  
 3       “, military satellite program, and strategic defense  
 4       missile program”; and

5           (3) by striking out the caption of such sub-  
 6       section and inserting in lieu thereof “LOW-RATE  
 7       INITIAL PRODUCTION OF NAVAL VESSEL, SAT-  
 8       ELLITE, AND STRATEGIC DEFENSE MISSILE PRO-  
 9       GRAMS.—”.

10       (b) SUBMISSION OF TEST AND EVALUATION MASTER  
 11   PLAN.—Paragraph (2) of such section is amended by  
 12   striking out subparagraph (B) and inserting in lieu there-  
 13   of the following:

14           “(B) any test and evaluation master plan pre-  
 15       pared for that program;”.

## 16   **Subtitle C—Service Specific Laws**

### 17   **SEC. 3021. INDUSTRIAL MOBILIZATION.**

18       (a) CONSOLIDATION AND REVISION OF AUTHOR-  
 19   ITY.—

20           (1) AUTHORITY.—Subtitle V of chapter 148 of  
 21       title 10, United States Code, is amended by adding  
 22       at the end the following new section:

1 **“§ 2538. Industrial mobilization: orders; priorities;**  
2 **possession of manufacturing plants; vio-**  
3 **lations**

4 “(a) ORDERING AUTHORITY.—In time of war or  
5 when war is imminent, the President, through the Sec-  
6 retary of Defense or the Secretary of a military depart-  
7 ment, may order from any person or organized manufac-  
8 turing industry necessary products or materials of the  
9 type usually produced or capable of being produced by  
10 that person or industry.

11 “(b) COMPLIANCE WITH ORDER REQUIRED.—A per-  
12 son or industry with whom an order is placed under sub-  
13 section (a), or the responsible head thereof, shall comply  
14 with that order and give it precedence over all orders not  
15 placed under that subsection.

16 “(c) SEIZURE OF FACILITIES UPON NONCOMPLI-  
17 ANCE.—In time of war or when war is imminent, the  
18 President, through the Secretary of Defense or the Sec-  
19 retary of a military department, may take immediate pos-  
20 session of any plant that is equipped to manufacture, or  
21 that in the opinion of the Secretary of Defense or the Sec-  
22 retary of the military department concerned, is capable of  
23 being readily transformed into a plant for manufacturing,  
24 arms or ammunition, parts thereof, or necessary supplies  
25 for the armed forces if the person or industry owning or

1 operating the plant, or the responsible head thereof,  
2 refuses—

3 “(1) to give precedence to the order as pre-  
4 scribed in subsection (b);

5 “(2) to manufacture the kind, quantity, or qual-  
6 ity of arms or ammunition, parts thereof, or nec-  
7 essary supplies, as ordered by the Secretary; or

8 “(3) to furnish them at a reasonable price as  
9 determined by the Secretary.

10 “(d) USE OF SEIZED FACILITY.—The President,  
11 through the Secretary of Defense or the Secretary of a  
12 military department, may manufacture products that are  
13 needed in time of war or when war is imminent, in any  
14 plant that is seized under subsection (c).

15 “(e) COMPENSATION REQUIRED.—Each person or in-  
16 dustry from whom products or materials are ordered  
17 under subsection (a) is entitled to fair and just compensa-  
18 tion. Each person or industry whose plant is seized under  
19 subsection (c) is entitled to a fair and just rental.

20 “(f) CRIMINAL PENALTY.—Whoever fails to comply  
21 with this section shall be imprisoned for not more than  
22 three years and fined not more than \$50,000.”.

23 (2) TECHNICAL AMENDMENT.—The table of  
24 sections at the beginning of subchapter V of such



chapter is amended by adding at the end the following new item:

“2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.”.

(b) REPEAL OF SUPERSEDED AUTHORITY.—

(1) ARMY AUTHORITY.—

(A) REPEAL.—Section 4501 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 431 of such title is amended by striking out the item relating to section 4501.

(2) AIR FORCE AUTHORITY.—

(A) REPEAL.—Section 9501 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 931 of such title is amended by striking out the item relating to section 9501.

**SEC. 3022. INDUSTRIAL MOBILIZATION: PLANTS; LISTS; BOARD ON MOBILIZATION OF INDUSTRIES ESSENTIAL FOR MILITARY PREPAREDNESS.**

(a) CONSOLIDATION AND REVISION OF AUTHORITY.—

(1) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, as amended by sec-

tion 3021(a)(1), is further amended by adding at the end the following:

**“§ 2539. Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness**

“(a) **LISTS OF ARMS AND AMMUNITION PLANTS.**—The Secretary of Defense and the secretaries of the military departments may each maintain a list of privately owned plants in the United States, and the Territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may, when the Secretary of Defense or the Secretary concerned determines it necessary, obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

“(b) **LISTS OF PLANTS CONVERTIBLE TO ARMS AND AMMUNITION FACTORIES.**—The Secretary of Defense and the secretaries of the military departments may each maintain a list of privately owned plants in the United States, and the Territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity

1 sufficient to warrant conversion into ammunition plants  
 2 in time of war or when war is imminent, and may, when  
 3 the Secretary of Defense or the Secretary concerned deter-  
 4 mines it necessary, obtain complete information as to the  
 5 equipment of each of those plants.

6 “(c) CONVERSION PLANS.—The Secretary of Defense  
 7 or the Secretary concerned may prepare comprehensive  
 8 plans for converting each plant listed pursuant to sub-  
 9 section (b) into a factory for the manufacture of ammuni-  
 10 tion or parts thereof.

11 “(d) BOARD ON MOBILIZATION OF INDUSTRIES ES-  
 12 SENTIAL FOR MILITARY PREPAREDNESS.—The President  
 13 may appoint a nonpartisan Board on Mobilization of In-  
 14 dustries Essential for Military Preparedness and may pro-  
 15 vide necessary clerical assistance to organize and coordi-  
 16 nate operations under this section and section 2538 of this  
 17 title.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-  
 19 tions at the beginning of subchapter V of such chap-  
 20 ter, as amended by section 3021(a)(2), is further  
 21 amended by adding at the end the following new  
 22 item:

“2539. Industrial mobilization: plants; lists; Board on Mobilization of Industries  
 Essential for Military Preparedness.”.

23 (b) REPEAL OF SUPERSEDED AUTHORITY.—

24 (1) ARMY AUTHORITY.—

1 (A) REPEAL.—Section 4502 of title 10,  
2 United States Code, is repealed.

3 (B) CLERICAL AMENDMENT.—The table of  
4 sections at the beginning of chapter 431 of such  
5 title is amended by striking out the item relat-  
6 ing to section 4502.

7 (2) AIR FORCE AUTHORITY.—

8 (A) REPEAL.—Section 9502 of title 10,  
9 United States Code, is repealed.

10 (B) CLERICAL AMENDMENT.—The table of  
11 sections at the beginning of subchapter I of  
12 chapter 931 of such title is amended by striking  
13 out the item relating to section 9502.

14 **SEC. 3023. PROCUREMENT FOR EXPERIMENTAL PURPOSES.**

15 (a) CONSOLIDATION AND REVISION OF AUTHOR-  
16 ITY.—

17 (1) AUTHORITY.—Chapter 139 of title 10,  
18 United States Code, is amended by adding at the  
19 end the following new section:

20 **“§ 2373. Procurement for experimental purposes**

21 “The Secretary of Defense and the secretaries of the  
22 military departments may each buy ordnance, signal, and  
23 chemical warfare supplies, including parts and accessories,  
24 and designs thereof, that the Secretary of Defense or the  
25 Secretary concerned considers necessary for experimental



1 or test purposes in the development of the best supplies  
2 that are needed for the national defense. Purchases under  
3 this section may be made inside or outside the United  
4 States by contract or otherwise. Chapter 137 of this title  
5 applies when such purchases are made in quantity.”.

6 (2) CLERICAL AMENDMENT.—The table of sec-  
7 tions at the beginning of such chapter is amended  
8 by adding at the end the following new item:

“2373. Procurement for experimental purposes.”.

9 (b) REPEAL OF SUPERSEDED AUTHORITY.—

10 (1) ARMY AUTHORITY.—

11 (A) REPEAL.—Section 4504 of title 10,  
12 United States Code, is repealed.

13 (B) CLERICAL AMENDMENT.—The table of  
14 sections at the beginning of chapter 431 of such  
15 title is amended by striking out the item relat-  
16 ing to section 4504.

17 (2) AIR FORCE AUTHORITY.—

18 (A) REPEAL.—Section 9504 of title 10,  
19 United States Code, is repealed.

20 (B) CLERICAL AMENDMENT.—The table of  
21 sections at the beginning of subchapter I of  
22 chapter 931 of such title is amended by striking  
23 out the item relating to section 9504.

1 **SEC. 3024. REPEAL OF AUTHORITY FOR PROCUREMENT OF**  
2 **PRODUCTION EQUIPMENT.**

3 (a) **ARMY AUTHORITY.—**

4 (1) **REPEAL.**—Section 4505 of title 10, United  
5 States Code, is repealed.

6 (2) **CLERICAL AMENDMENT.**—The table of sec-  
7 tions at the beginning of chapter 431 of such title  
8 is amended by striking out the item relating to sec-  
9 tion 4505.

10 (b) **AIR FORCE AUTHORITY.—**

11 (1) **REPEAL.**—Section 9505 of title 10, United  
12 States Code, is repealed.

13 (2) **CLERICAL AMENDMENT.**—The table of sec-  
14 tions at the beginning of subchapter I of chapter  
15 931 of such title is amended by striking out the item  
16 relating to section 9505.

17 **SEC. 3025. AVAILABILITY OF DEPARTMENT OF DEFENSE**  
18 **SAMPLES, DRAWINGS, INFORMATION, EQUIP-**  
19 **MENT, MATERIALS, AND CERTAIN SERVICES.**

20 (a) **CONSOLIDATION AND REVISION OF AUTHOR-**  
21 **ITY.—**

22 (1) **AUTHORITY.**—Subchapter V of chapter 148  
23 of title 10, United States Code, as amended by sec-  
24 tion 3022(a)(1), is further amended by adding at  
25 the end the following:

1 **“§ 2540. Availability of samples, drawings, informa-**  
2 **tion, equipment, materials, and certain**  
3 **services**

4 “(a) **AUTHORITY.**—The Secretary of Defense and the  
5 secretaries of the military departments, under regulations  
6 prescribed by the Secretary of Defense and when deter-  
7 mined by the Secretary of Defense or the Secretary con-  
8 cerned to be in the interest of national defense, may  
9 each—

10 “(1) sell, lend, or give samples, drawings, and  
11 manufacturing or other information (subject to the  
12 rights of third parties) to any person or entity;

13 “(2) sell or lend government equipment or ma-  
14 terials to any person or entity—

15 “(A) for use in independent research and  
16 development programs, subject to the condition  
17 that the equipment or material be used exclu-  
18 sively for such research and development; or

19 “(B) for use in demonstrations to a friend-  
20 ly foreign government; and

21 “(3) make available to any person or entity, at  
22 an appropriate fee, the services of any government  
23 laboratory, center, range, or other testing facility for  
24 the testing of materials, equipment, models, com-  
25 puter software, and other items.

1       “(b) CONFIDENTIALITY OF TEST RESULTS.—The re-  
 2       sults of tests performed with services made available pur-  
 3       suant to subsection (a)(3) are confidential and may not  
 4       be disclosed outside the Federal Government without the  
 5       consent of the persons for whom the tests are performed.

6       “(c) FEES.—Fees for services made available for  
 7       testing under subsection (a)(3) shall be established in the  
 8       regulations prescribed pursuant to subsection (a). Such  
 9       fees may not be less than the direct costs involved, includ-  
 10      ing the direct costs of utilities, contractor support, and  
 11      salaries of personnel that are incurred by the United  
 12      States to provide for the testing.

13      “(d) USE OF COLLECTED FEES.—Fees received for  
 14      services made available pursuant to subsection (a)(3) may  
 15      be credited to the appropriations or other funds of the ac-  
 16      tivity providing such services.”.

17               (2) CLERICAL AMENDMENT.—The table of sec-  
 18      tions at the beginning of subchapter V of such chap-  
 19      ter, as amended by section 3022(a)(2), is further  
 20      amended by adding at the end the following new  
 21      item:

“2540. Availability of samples, drawings, information, equipment, materials, and  
 certain services.”.

22               (b) CONFORMING AMENDMENTS.—

23               (1) EXEMPTION FROM ADVERTISING REQUIRE-  
 24      MENT.—Section 2314 of title 10, United States



Code, is amended by inserting “or sale” after “procurement”.

(2) REPEAL OF SUPERSEDED ARMY AUTHORITY.—Chapter 431 of title 10, United States Code, is amended—

(A) by striking out sections 4506, 4507, and 4508; and

(B) in the table of sections at the beginning of such chapter, by striking out the items relating to such sections.

(3) REPEAL OF SUPERSEDED AIR FORCE AUTHORITY.—Subchapter I of chapter 931 of title 10, United States Code, is amended—

(A) by striking out sections 9506 and 9507; and

(B) in the table of sections at the beginning of such subchapter, by striking out the items relating to such sections.

**SEC. 3026. REPEAL OF DUPLICATIVE GENERAL PROCUREMENT AUTHORITY.**

(a) ARMY AUTHORITY.—

(1) REPEAL.—Section 4531 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title

1 is amended by striking out the item relating to sec-  
2 tion 4531.

3 (b) AIR FORCE AUTHORITY.—

4 (1) REPEAL.—Section 9531 of title 10, United  
5 States Code, is repealed.

6 (2) CLERICAL AMENDMENT.—The table of sec-  
7 tions at the beginning of chapter 933 of such title  
8 is amended by striking out the item relating to sec-  
9 tion 9531.

10 **SEC. 3027. REPEAL OF AUTHORITY TO DELEGATE THE PRO-**  
11 **CUREMENT OF ARMY RATIONS.**

12 (a) REPEAL.—Section 4533 of title 10, United States  
13 Code, is repealed.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 at the beginning of chapter 433 of such title is amended  
16 by striking out the item relating to section 4533.

17 **SEC. 3028. REPEAL OF AUTHORITY TO PURCHASE EXCEP-**  
18 **TIONAL SUBSISTENCE SUPPLIES WITHOUT**  
19 **ADVERTISING.**

20 (a) ARMY AUTHORITY.—

21 (1) REPEAL.—Section 4535 of title 10, United  
22 States Code, is repealed.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions at the beginning of chapter 433 of such title

1 is amended by striking out the item relating to sec-  
2 tion 4535.

3 (b) AIR FORCE AUTHORITY.—

4 (1) REPEAL.—Section 9535 of title 10, United  
5 States Code, is repealed.

6 (2) CLERICAL AMENDMENT.—The table of sec-  
7 tions at the beginning of chapter 933 of such title  
8 is amended by striking out the item relating to sec-  
9 tion 9535.

10 **SEC. 3029. REPEAL OF AUTHORITY TO OBTAIN ASSISTANCE**  
11 **OF UNITED STATES MAPPING AGENCIES.**

12 (a) ARMY AUTHORITY.—

13 (1) REPEAL.—Section 4537 of title 10, United  
14 States Code, is repealed.

15 (2) CLERICAL AMENDMENT.—The table of sec-  
16 tions at the beginning of chapter 433 of such title  
17 is amended by striking out the item relating to sec-  
18 tion 4537.

19 (b) AIR FORCE AUTHORITY.—

20 (1) REPEAL.—Section 9537 of title 10, United  
21 States Code, is repealed.

22 (2) CLERICAL AMENDMENT.—The table of sec-  
23 tions at the beginning of chapter 933 of such title  
24 is amended by striking out the item relating to sec-  
25 tion 9537.

1 **SEC. 3030. REPEAL OF AUTHORITY TO RECLAIM UNSERV-**  
2 **ICEABLE AMMUNITION.**

3 (a) **ARMY AUTHORITY.—**

4 (1) **REPEAL.**—Section 4538 of title 10, United  
5 States Code, is repealed.

6 (2) **CLERICAL AMENDMENT.**—The table of sec-  
7 tions at the beginning of chapter 433 of such title  
8 is amended by striking out the item relating to sec-  
9 tion 4538.

10 (b) **AIR FORCE AUTHORITY.—**

11 (1) **REPEAL.**—Section 9538 of title 10, United  
12 States Code, is repealed.

13 (2) **CLERICAL AMENDMENT.**—The table of sec-  
14 tions at the beginning of chapter 933 of such title  
15 is amended by striking out the item relating to sec-  
16 tion 9538.

17 **SEC. 3031. GRATUITOUS SERVICES OF OFFICERS OF CER-**  
18 **TAIN RESERVE COMPONENTS.**

19 (a) **CONSOLIDATION AND REVISION OF AUTHOR-**  
20 **ITY.—**

21 (1) **AUTHORITY.**—Chapter 11 of title 10,  
22 United States Code, is amended by inserting after  
23 section 278 the following new section:



1 **“§ 279. Gratuitous services of officers of certain re-**  
2 **serve components**

3 “The Secretary of Defense and the secretaries of the  
4 military departments may each accept the gratuitous serv-  
5 ices of officers of the Army Reserve, Naval Reserve, Air  
6 Force Reserve, and Marine Corps Reserve in the enrolling,  
7 organizing, and training of members of such reserve com-  
8 ponents or the Reserve Officers’ Training Corps, or in  
9 consulting on matters relating to the armed forces.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-  
11 tions at the beginning of chapter 11 of such title is  
12 amended by inserting after the item relating to sec-  
13 tion 278 the following new item:

“Sec. 279. Gratuitous services of officers of certain reserve components.”.

14 (b) REPEAL OF SUPERSEDED PROVISIONS.—

15 (1) ARMY AUTHORITY.—

16 (A) REPEAL.—Section 4541 of title 10,  
17 United States Code, is repealed.

18 (B) CLERICAL AMENDMENT.—The table of  
19 sections at the beginning of chapter 433 of such  
20 title is amended by striking out the item relat-  
21 ing to section 4541.

22 (2) AIR FORCE AUTHORITY.—

23 (A) REPEAL.—Section 9541 of title 10,  
24 United States Code, is repealed.

1 (B) CLERICAL AMENDMENT.—The table of  
 2 sections at the beginning of chapter 933 of such  
 3 title is amended by striking out the item relat-  
 4 ing to section 9541.

5 **SEC. 3032. CIVIL RESERVE AIR FLEET.**

6 (a) DEFINITION OF CONTRACTOR.—Section 9511(8)  
 7 of title 10, United States Code, is amended—

8 (1) by striking out “or” at the end of subpara-  
 9 graph (A); and

10 (2) by inserting before the period at the end the  
 11 following: “, or (C) who owns or controls, or will  
 12 own or control, new or existing aircraft and who, by  
 13 contract, commits some or all of such aircraft to the  
 14 Civil Reserve Air Fleet”.

15 (b) CONSOLIDATION OF PROVISIONS RELATING TO  
 16 CONTRACTUAL COMMITMENT OF AIRCRAFT.—Subchapter  
 17 II of chapter 931 of such title is amended—

18 (1) by redesignating subsections (b) and (c) of  
 19 section 9512 as subsections (c) and (d), respectively;

20 (2) by redesignating subsection (a) of section  
 21 9513 as subsection (b) and transferring such sub-  
 22 section (as so redesignated) to section 9512, and in-  
 23 serting such subsection after subsection (a);

24 (3) by redesignating subsection (b) of section  
 25 9513 as subsection (e) and transferring such sub-

section (as so redesignated) to the end of section 9512;

(4) in subsection (c) of section 9512, as redesignated by paragraph (1), by striking out “the terms required by section 9513 of this title and”;

(5) in subsection (e) of section 9512, as redesignated and transferred to such section by paragraph (3), by striking out “under section 9512 of this title” and inserting in lieu thereof “entered into under this section”; and

(6) by striking out the heading of section 9513.

(c) USE OF MILITARY INSTALLATIONS BY CONTRACTORS.—

(1) AUTHORITY.—Subchapter II of such chapter, as amended by subsection (b), is further amended by adding at the end the following new section 9513:

**“§ 9513. Use of military installations by Civil Reserve**

**Air Fleet contractors**

“(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—

“(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and

1           “(B) with the consent of the Secretary of an-  
2           other military department, may, by contract entered  
3           into with any contractor, authorize the contractor to  
4           use one or more installations, designated by the Sec-  
5           retary of the Air Force, that is under the jurisdic-  
6           tion of the Secretary of such other military depart-  
7           ment.

8           “(2) The Secretary of the Air Force may include in  
9           the contract such terms and conditions as the Secretary  
10          determines appropriate to promote the national defense or  
11          to protect the interests of the United States.

12          “(b) PURPOSES OF USE.—A contract entered into  
13          under subsection (a) may authorize use of a designated  
14          installation as a weather alternate, a technical stop not  
15          involving the enplaning or deplaning of passengers or  
16          cargo, or, in the case of an installation within the United  
17          States, for other commercial purposes. Notwithstanding  
18          any other provision of the law, the Secretary may establish  
19          different levels and types of uses for different installations  
20          and may provide in contracts under subsection (a) for dif-  
21          ferent levels and types of uses by different contractors.

22          “(c) DISPOSITION OF PAYMENTS FOR USE.—Not-  
23          withstanding the provisions of section 1107(b) of the Fed-  
24          eral Aviation Act of 1958 (49 U.S.C. 1507(b)), and any  
25          other provision of law, amounts collected in a fiscal year



1 from a contractor for services or supplies or as landing  
2 fees or other charges authorized to be collected for use  
3 of an installation under a contract entered into under sub-  
4 section (a) shall be credited to an appropriation for such  
5 fiscal year for the military department that has jurisdic-  
6 tion over such installation.

7 “(d) HOLD HARMLESS REQUIREMENT.—A contract  
8 entered into under subsection (a) shall provide that the  
9 contractor agrees to indemnify and hold harmless the Air  
10 Force (and any other armed force having jurisdiction over  
11 any installation covered by the contract) from all actions,  
12 suits, or claims of any sort resulting from, relating to, or  
13 arising out of any activities conducted, or services or sup-  
14 plies furnished, in connection with the contract.

15 “(e) RESERVATION OF RIGHT TO EXCLUDE CON-  
16 TRACTOR.—A contract entered into under subsection (a)  
17 shall provide that the Secretary concerned may, without  
18 providing prior notice, deny access to an installation des-  
19 ignated under the contract when the Secretary determines  
20 that it is necessary to do so in order to meet military ex-  
21 igencies.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-  
23 tions at the beginning of subchapter II of such chap-  
24 ter is amended by striking out the item relating to

1 section 9513 and inserting in lieu thereof the follow-  
2 ing:

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

3 **SEC. 3033. REPEAL OF NAVY AUTHORITY REGARDING RE-**  
4 **SEARCH AND DEVELOPMENT, PROCURE-**  
5 **MENT, AND CONSTRUCTION OF GUIDED MIS-**  
6 **SILES.**

7 (a) **REPEAL OF OBSOLETE AUTHORITY.**—Section  
8 7201 of title 10, United States Code, is repealed.

9 (b) **CLERICAL AMENDMENT.**—The table of sections  
10 at the beginning of chapter 631 of such title is amended  
11 by striking out the item relating to section 7201.

12 **SEC. 3034. EXCHANGE OF SCIENTIFIC PERSONNEL.**

13 (a) **EXCHANGE AUTHORITY.**—Subchapter II of chap-  
14 ter 138 of title 10, United States Code, is amended by  
15 adding at the end the following new section:

16 **“§ 2350j. Exchange of scientific personnel**

17 **“(a) INTERNATIONAL EXCHANGE AGREEMENTS AU-**  
18 **THORIZED.**—The Secretary of Defense is authorized to  
19 enter into agreements with the governments of allies of  
20 the United States and other friendly foreign countries for  
21 the exchange of military and civilian scientific personnel  
22 of the Department of Defense and military and civilian  
23 scientific personnel of the defense ministries of such for-  
24 eign governments.

1       “(b) ASSIGNMENT OF PERSONNEL.—Pursuant to an  
2 agreement entered into under subsection (a), personnel of  
3 the defense ministry of a foreign government may be as-  
4 signed to positions in the Department of Defense, and per-  
5 sonnel of the Department of Defense may be assigned to  
6 positions in the defense ministry of that foreign govern-  
7 ment. An agreement for the exchange of personnel en-  
8 gaged in research and development activities may provide  
9 for assignment of such personnel to positions in private  
10 industry that support the defense ministry of such foreign  
11 government. A specific position and the individual to be  
12 assigned to that position shall be acceptable to both gov-  
13 ernments.

14       “(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS  
15 REQUIRED.—Each government shall be required under an  
16 agreement authorized by subsection (a) to provide person-  
17 nel having qualifications, training, and skills that are es-  
18 sentially equal to those of the personnel provided by the  
19 other government.

20       “(d) PAYMENT OF PERSONNEL COSTS.—Each gov-  
21 ernment shall pay the salary, per diem, cost of living, trav-  
22 el, cost of language or other training, and other costs (ex-  
23 cept for cost of temporary duty directed by the host gov-  
24 ernment and costs incident to the use of host government  
25 facilities in the performance of assigned duties) for its own

1 personnel in accordance with the laws and regulations of  
2 such government that pertain to such matters.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 at the beginning of subchapter II of such chapter is  
5 amended by adding at the end the following new item:

“2350j. Exchange of scientific personnel.”.

6 **SEC. 3035. REPEAL OF AUTHORITY FOR SECRETARY OF**  
7 **THE NAVY TO PROVIDE TEMPORARY RELIEF**  
8 **FOR CONTRACTORS AND CONTRACTOR EM-**  
9 **PLOYEES FROM LOSSES CAUSED BY ENEMY**  
10 **ACTION.**

11 (a) REPEAL.—Section 7213 of title 10, United States  
12 Code, is repealed.

13 (b) CLERICAL AMENDMENT.—The table of sections  
14 at the beginning of chapter 631 of such title is amended  
15 by striking out the item relating to section 7213.

16 **SEC. 3036. REPEAL OF AUTHORITY FOR SECRETARY OF**  
17 **THE NAVY TO SELL DEGAUSSING EQUIP-**  
18 **MENT.**

19 (a) REPEAL.—Section 7230 of title 10, United States  
20 Code, is repealed.

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 at the beginning of chapter 631 of such title is amended  
23 by striking out the item relating to section 7230.



1 **SEC. 3037. REPEAL OF AUTHORITY FOR ALTERNATIVE USE**  
2 **OF APPROPRIATIONS FOR CONSTRUCTION**  
3 **OR CONVERSION OF VESSELS.**

4 (a) REPEAL.—Section 7296 of title 10, United States  
5 Code, is repealed.

6 (b) CLERICAL AMENDMENT.—The table of sections  
7 at the beginning of chapter 633 of such title is amended  
8 by striking out the item relating to section 7296.

9 **SEC. 3038. REPEAL OF AUTHORITY FOR CONVERSION OF**  
10 **COMBATANT AND AUXILIARY NAVAL VES-**  
11 **SELS.**

12 (a) REPEAL.—Section 7298 of title 10, United States  
13 Code, is repealed.

14 (b) CLERICAL AMENDMENT.—The table of sections  
15 at the beginning of chapter 633 of such title is amended  
16 by striking out the item relating to section 7298.

17 **SEC. 3039. CONSTRUCTION OF COMBATANT AND ESCORT**  
18 **VESSELS AND ASSIGNMENT OF VESSEL**  
19 **PROJECTS.**

20 (a) REPEAL OF OBSOLETE AND INTERNALLY INCON-  
21 SISTENT PROVISIONS.—Section 7299a of title 10, United  
22 States Code, is amended—

23 (1) by striking out subsection (a); and

24 (2) by redesignating subsections (b) and (c) as  
25 subsections (a) and (b), respectively.

1 (b) CONFORMING AMENDMENT.—Subsection (b) of  
 2 such section, as redesignated by subsection (a)(2), is  
 3 amended in paragraph (2) by striking out “subsection (a)  
 4 or”.

5 **SEC. 3040. REPEAL OF REQUIREMENT FOR ESTIMATES IN**  
 6 **CONNECTION WITH BIDS ON CONSTRUCTION**  
 7 **OF NAVAL VESSELS.**

8 (a) REPEAL.—Section 7301 of title 10, United States  
 9 Code, is repealed.

10 (b) CLERICAL AMENDMENT.—The table of sections  
 11 at the beginning of chapter 633 of such title is amended  
 12 by striking out the item relating to section 7301.

13 **SEC. 3041. REPEAL OF REQUIREMENT FOR CONSTRUCTION**  
 14 **OF VESSELS ON PACIFIC COAST.**

15 (a) REPEAL.—Section 7302 of title 10, United States  
 16 Code, is repealed.

17 (b) CLERICAL AMENDMENT.—The table of sections  
 18 at the beginning of chapter 633 of such title is amended  
 19 by striking out the item relating to section 7302.

20 **SEC. 3042. FITNESS OF NAVAL VESSELS: EXAMINATION;**  
 21 **STRIKING UNFIT VESSELS; DISPOSAL.**

22 (a) CONSOLIDATION AND REVISION OF AUTHOR-  
 23 ITY.—

24 (1) AUTHORITY.—Section 7304 of title 10,  
 25 United States Code, is amended to read as follows:

1   **“§ 7304. Fitness of vessels: examination; striking from**  
2                   **Naval Vessel Register; disposal**

3           “(a) TRIENNIAL EXAMINATION OF VESSELS RE-  
4   QUIRED.—The Secretary of the Navy shall designate  
5   boards of naval officers to examine all naval vessels, in-  
6   cluding unfinished vessels. Each vessel shall be examined  
7   at least once every three years if practicable.

8           “(b) BOARD RECOMMENDATIONS.—A board des-  
9   ignated under subsection (a) shall recommend to the Sec-  
10   retary of the Navy in writing which vessels, if any, should  
11   be stricken from the Naval Vessel Register. In making  
12   such recommendations, the board shall consider whether  
13   a vessel is unfit for service or whether an unfinished vessel  
14   cannot be finished without disproportionate expense.

15           “(c) ACTION OF THE SECRETARY.—If the Secretary  
16   concurs with a board’s recommendation that a vessel be  
17   stricken from the Naval Vessel Register, the Secretary  
18   shall strike the name of that vessel from the Naval Vessel  
19   Register.

20           “(d) APPRAISAL OF STRICKEN VESSEL.—The Sec-  
21   retary of the Navy shall appraise each vessel stricken from  
22   the Naval Vessel Register.

23           “(e) SALE OF STRICKEN VESSEL.—(1) When the  
24   Secretary determines that it is in the national interest,  
25   the Secretary may sell a vessel stricken from the Naval  
26   Vessel Register.

1       “(2) A vessel stricken from the Naval Vessel Register  
2 and not subject to disposition under any other law, may  
3 be sold at public sale to the highest acceptable bidder, re-  
4 gardless of the vessel’s appraised value, after being adver-  
5 tised for sale for a period of not less than 30 days.

6       “(3) If the Secretary determines that the bid prices  
7 received after advertising are not reasonable and that  
8 readvertising will serve no useful purpose, the vessel may  
9 be sold by negotiation to the highest acceptable offeror,  
10 but only if—

11               “(A) each responsible bidder has been notified  
12 of the intent to negotiate a sale of the vessel and has  
13 been given a reasonable opportunity to negotiate  
14 with the Secretary for the purchase of that vessel;  
15 and

16               “(B) the negotiated price—

17                       “(i) is higher than the highest rejected  
18 price of any responsible bidder; or

19                       “(ii) is reasonable and is in the national  
20 interest.

21       “(f) OTHER TRANSFERS.—(1) The Secretary of the  
22 Navy is authorized to transfer, by gift or otherwise, any  
23 vessel stricken from the Naval Vessel Register or any cap-  
24 tured vessel to—



1           “(A) any State, Commonwealth, or possession  
2       of the United States, or to any municipal corpora-  
3       tion or political subdivision thereof;

4           “(B) the District of Columbia; or

5           “(C) any not-for-profit or nonprofit entity.

6       “(2) A transfer under paragraph (1) shall be made  
7       at no cost to the United States and may not be made un-  
8       less the transferee agrees to maintain the vessel in a condi-  
9       tion satisfactory to the Secretary of the Navy.

10       “(g) USE FOR EXPERIMENTAL PURPOSES.—The  
11       Secretary of the Navy is authorized to use for experi-  
12       mental purposes any vessel stricken from the Naval Vessel  
13       Register. A vessel so used shall first be stripped to the  
14       maximum extent practicable. The proceeds received from  
15       stripping the vessel shall be credited to appropriations  
16       available for the procurement of the scrapping services  
17       needed for stripping of that vessel. Excess receipts shall  
18       be deposited into the general fund of the Treasury.

19       “(h) INAPPLICABILITY OF OTHER LAW.—The provi-  
20       sions of title II of the Federal Property and Administra-  
21       tive Services Act of 1949 (40 U.S.C. 481 et seq.) do not  
22       apply to the disposition of a naval vessel under this sec-  
23       tion.

24       “(i) LIMITATION.—Notwithstanding any other provi-  
25       sion of law, no battleship, aircraft carrier, cruiser, de-

1 stroyer, or submarine of the Navy may be sold, trans-  
 2 ferred, or otherwise disposed of, unless the Chief of Naval  
 3 Operations certifies that it is not essential to the defense  
 4 of the United States.”.

5 (2) CLERICAL AMENDMENT.—The item relating  
 6 to such section in the table of sections at the begin-  
 7 ning of chapter 633 of such title is amended to read  
 8 as follows:

“7304. Fitness of vessels: examination; striking from Naval Vessel Register; dis-  
 posal.”.

9 (b) REPEAL OF SUPERSEDED PROVISIONS.—

10 (1) REPEAL.—Sections 7305, 7306, 7307, and  
 11 7308 of title 10, United States Code, are repealed.

12 (2) CLERICAL AMENDMENT.—The table of sec-  
 13 tions at the beginning of chapter 633 of such title  
 14 is amended by striking out the items relating to such  
 15 sections.

16 **SEC. 3043. REPEAL OF POLICY ON CONSTRUCTING COM-**  
 17 **BATANT VESSELS.**

18 (a) REPEAL.—Section 7310 of title 10, United States  
 19 Code, is repealed.

20 (b) CLERICAL AMENDMENT.—The table of sections  
 21 at the beginning of chapter 633 of such title is amended  
 22 by striking out the item relating to section 7310.

1 **SEC. 3044. NAVAL SALVAGE FACILITIES.**

2 (a) CONSOLIDATION OF AUTHORITY.—Chapter 637  
3 of title 10, United States Code, is amended—

4 (1) in section 7361—

5 (A) in subsection (a), by inserting “AU-  
6 THORITY TO PROVIDE FACILITIES BY CON-  
7 TRACT OR OTHERWISE.—” after “(a)”;

8 (B) in subsection (b), by inserting “CON-  
9 TRACTS AFFECTING THE DEPARTMENT OF  
10 TRANSPORTATION.—” after “(b)”;

11 (C) in subsection (c)—

12 (i) by inserting “LIMITATION ON  
13 TERM CONTRACTS.—” after “(c)”;

14 (ii) by striking out “under this sec-  
15 tion” and inserting in lieu thereof “under  
16 subsection (a)”;

17 (2) by designating the text of section 7362 as  
18 subsection (d) and transferring such text, as so des-  
19 ignated, to the end of section 7361 of title 10,  
20 United States Code;

21 (3) in subsection (d) of section 7361 of such  
22 title, as so designated and transferred, by inserting  
23 before “The Secretary” the following: “COMMERCIAL  
24 USE OF NAVAL VESSELS AND EQUIPMENT.—”;

25 (4) by designating the text of section 7363 as  
26 subsection (e) and transferring such text, as so des-

1       ignated, to the end of section 7361 of title 10,  
2       United States Code;

3           (5) in subsection (e) of section 7361 of such  
4       title, as so designated and transferred, by inserting  
5       before “Before any salvage vessel” the following:  
6       “CONDITIONS FOR TRANSFER OF EQUIPMENT.—”;

7           (6) by designating the text of section 7365 as  
8       subsection (f) and transferring such text, as so des-  
9       ignated, to the end of section 7361 of title 10,  
10      United States Code;

11          (7) in subsection (f) of section 7361 of such  
12      title, as so designated and transferred, by inserting  
13      before “The Secretary” the following: “SETTLE-  
14      MENT OF CLAIMS.—”;

15          (8) by designating the text of section 7366 as  
16      subsection (g) and transferring such text, as so des-  
17      ignated, to the end of section 7361 of title 10,  
18      United States Code;

19          (9) in subsection (g) of section 7361 of such  
20      title, as so designated and transferred—

21           (A) by inserting before “Not more than”  
22      the following: “LIMITATION ON APPROPRIA-  
23      TIONS.—”; and

24           (B) by striking out “this chapter” and in-  
25      serting in lieu thereof “this section”;



(10) by designating the text of section 7367 as subsection (h) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(11) in subsection (h) of section 7361 of such title, as so designated and transferred—

(A) by inserting before “Money received” the following: “DISPOSITION OF RECEIPTS.—”; and

(B) by striking out “this chapter” in the first sentence and inserting in lieu thereof “this section”;

(12) by striking out the section headings for sections 7362, 7363, 7365, 7366, and 7367;

(13) by striking out the heading for section 7361 and inserting in lieu thereof the following:

**“§ 7361. Navy support for salvage operations”;**

and

(14) in the table of sections at the beginning of such chapter—

(A) by striking out the item relating to section 7361 and inserting in lieu thereof the following:

“7361. Navy support for salvage operations.”;

and

1 (B) by striking out the items relating to  
2 sections 7362, 7363, 7365, 7366, and 7367.

3 **Subtitle D—Department of Defense**  
4 **Commercial and Industrial Ac-**  
5 **tivities**

6 **SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.**

7 (a) CONSOLIDATION AND REVISION OF AUTHOR-  
8 ITY.—

9 (1) AUTHORITY.—Subchapter V of chapter 148  
10 of title 10, United States Code, as amended by sec-  
11 tion 3025(a)(1), is further amended by adding at  
12 the end the following:

13 **“§ 2541. Factories and arsenals: manufacture at**

14 “(a) The Secretary of Defense or the Secretary of  
15 a military department may have supplies needed for the  
16 Department of Defense or such military department, as  
17 the case may be, made in factories or arsenals owned by  
18 the United States.

19 “(b) The Secretary of Defense or the Secretary of  
20 the military department concerned may abolish any  
21 United States arsenal that such Secretary considers un-  
22 necessary.”.

23 (2) TECHNICAL AMENDMENT.—The table of  
24 sections at the beginning of subchapter V of such  
25 chapter, as amended by section 3025(a)(2), is fur-

ther amended by adding at the end the following  
new item:

“2541. Factories and arsenals: manufacture at.”.

(b) REPEAL OF SUPERSEDED AUTHORITY.—

(1) ARMY AUTHORITY.—

(A) REPEAL.—Section 4532 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4532.

(2) AIR FORCE AUTHORITY.—

(A) REPEAL.—Section 9532 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such title is amended by striking out the item relating to section 9532.

**SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED  
ADVISORY AND ASSISTANCE SERVICES.**

(a) FUNDING TO BE IDENTIFIED IN BUDGET.—Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(g)(1) The Director of the Office of Management and Budget shall establish the funding for consulting services for each department and agency as a separate object

1 class in each budget annually submitted to the Congress  
2 under this section.

3 “(2) For purposes of this subsection, consulting serv-  
4 ices include—

5 “(A) management and professional support  
6 services;

7 “(B) studies, analyses, and evaluations;

8 “(C) engineering and technical services (exclud-  
9 ing routine engineering services such as automated  
10 data processing and architect and engineering con-  
11 tracts); and

12 “(D) research and development.”.

13 (b) REPEAL OF SOURCE LAW.—Section 512 of Pub-  
14 lic Law 102–394 (106 Stat. 1826) is repealed.

15 (c) REPEAL OF SUPERSEDED PROVISION.—

16 (1) DOD SPECIFIC LAW.—Section 2212 of title  
17 10, United States Code, is repealed.

18 (2) CLERICAL AMENDMENT.—The table of sec-  
19 tions at the beginning of chapter 131 of such title  
20 is amended by striking out the item relating to sec-  
21 tion 2212.



## **Subtitle E—Fuel- and Energy- Related Laws**

### **SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS FOR STORAGE, HANDLING, OR DISTRIBUTION.**

(a) REVISION OF AUTHORITY.—Section 2388 of title 10, United States Code, is amended—

(1) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

“(a) AUTHORITY TO CONTRACT.—The Secretary of Defense and the Secretary of a military department may each contract for storage facilities for, or the storage, handling, or distribution of, liquid fuels and natural gas.

“(b) PERIOD OF CONTRACT.—The period of a contract entered into under subsection (a) may not exceed 5 years. However, the contract may provide options for the Secretary to renew the contract for additional periods of not more than 5 years each, but not for more than a total of 20 years.”; and

(2) in subsection (c), by inserting “OPTION TO PURCHASE FACILITY.—” after “(c)”.

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

1 **“§ 2388. Liquid fuels and natural gas: contracts for**  
 2 **storage, handling, or distribution”.**

3 (2) TABLE OF SECTIONS.—The item relating to  
 4 such section in the table of sections at the beginning  
 5 of chapter 141 of title 10, United States Code, is  
 6 amended to read as follows:

“2388. Liquid fuels and natural gas: contracts for storage, handling, or distribu-  
 tion.”.

7 **SEC. 3062. ACQUISITION OF PETROLEUM AND NATURAL**  
 8 **GAS: AUTHORITY TO WAIVE PROCEDURES.**

9 (a) ACQUISITION, SALE, AND EXCHANGE OF NATU-  
 10 RAL GAS.—Section 2404 of title 10, United States Code,  
 11 is amended—

12 (1) in subsection (a)—

13 (A) in the matter above paragraph (1), by  
 14 inserting “or natural gas” after “petroleum”;

15 (B) in paragraph (1)—

16 (i) by inserting “or natural gas mar-  
 17 ket conditions, as the case may be,” after  
 18 “petroleum market conditions”; and

19 (ii) by inserting “or acquisition of  
 20 natural gas, respectively,” after “acquisi-  
 21 tion of petroleum”; and

22 (C) in paragraph (2), by inserting “or nat-  
 23 ural gas, as the case may be,” after “petro-  
 24 leum”; and

1           (2) in subsection (b), by inserting “or natural  
2       gas” in the second sentence after “petroleum”.

3       (b) EXPANSION OF EXCHANGE AUTHORITY.—Sub-  
4       section (c) of such section is amended to read as follows:

5       “(c) EXCHANGE AUTHORITY.—The Secretary of De-  
6       fense may acquire petroleum, petroleum-related services,  
7       natural gas, or natural gas-related services by exchange  
8       of petroleum, petroleum-related services, natural gas, or  
9       natural gas-related services.”.

10       (c) SALE OF PETROLEUM AND NATURAL GAS.—Such  
11       section is amended—

12           (1) by redesignating subsection (d) as sub-  
13       section (e); and

14           (2) by inserting after subsection (c) the follow-  
15       ing new subsection (d):

16       “(d) AUTHORITY TO SELL.—The Secretary of De-  
17       fense may sell petroleum or natural gas of the Department  
18       of Defense if the Secretary determines that the sale would  
19       be in the public interest. The proceeds of such a sale shall  
20       be credited to appropriations of the Department of De-  
21       fense for the fiscal year in which received and shall be  
22       available for such fiscal year for the acquisition of petro-  
23       leum, petroleum-related services, natural gas, or natural  
24       gas-related services.”.

25       (d) TECHNICAL AND CLERICAL AMENDMENTS.—

1 (1) SUBSECTION CAPTIONS.—Section 2404 of  
2 title 10, United States Code, is amended—

3 (A) in subsection (a), by inserting “WAIV-  
4 ER AUTHORITY.—” after “(a)”;

5 (B) in subsection (b), by inserting “SCOPE  
6 OF WAIVER.—” after “(b)”;

7 (C) in subsection (e), as redesignated by  
8 subsection (c)(1), by inserting “PETROLEUM  
9 DEFINED.—” after “(e)”.

10 (2) SECTION HEADING.—The heading of such  
11 section is amended to read as follows:

12 **“§ 2404. Acquisition of petroleum and natural gas: au-**  
13 **thority to waive contract procedures; ac-**  
14 **quisition by exchange; sales authority”.**

15 (3) TABLE OF SECTIONS.—The item relating to  
16 such section in the table of sections at the beginning  
17 of chapter 141 of title 10, United States Code, is  
18 amended to read as follows:

“2404. Acquisition of petroleum and natural gas: authority to waive contract  
procedures; acquisition by exchange; sales authority.”.



## Subtitle F—Fiscal Statutes

**SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DEPARTMENT TO COVER OBLIGATIONS OF ANOTHER AGENCY OF DEPARTMENT OF DEFENSE.**

Subsection (c)(2) of section 3321 of title 31, United States Code, is amended by striking out “military departments of the” and inserting in lieu thereof “The”.

## Subtitle G—Miscellaneous

**SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.**

Section 2202 of title 10, United States Code, is amended to read as follows:

**“§ 2202. Obligation of funds: limitation**

“The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.”.

**SEC. 3082. REPEAL OF PROVISIONS FOR THE ENCOURAGEMENT OF AVIATION.**

(a) **REPEAL.**—Chapter 135 of title 10, United States Code, is repealed.

(b) **CLERICAL AMENDMENT.**—The tables of chapters at the beginning of subtitle A of such title and the begin-

ning of part IV of such subtitle are amended by striking out the item relating to chapter 135.

**SEC. 3083. REPEAL OF REQUIREMENTS REGARDING PRODUCT EVALUATION ACTIVITIES.**

(a) REPEAL.—Section 2369 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item related to section 2369.

**SEC. 3084. REPEAL OF PRICE ADJUSTMENT AUTHORITY AND PURCHASE AUTHORITY RELATING TO THE PROCUREMENT OF MILK.**

(a) REPEAL.—Section 2389 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item related to section 2389.

**SEC. 3085. CODIFICATION AND REVISION OF LIMITATION ON LEASE OF VESSELS, AIRCRAFT, AND VEHICLES.**

(a) LIMITATION.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

1 **“§ 2410e. Lease of vessels, aircraft, and vehicles**

2       “The head of an agency named in paragraph (1), (2),  
3 (3), or (4) of section 2303(a) of this title may not enter  
4 into any contract with a term of 18 months or more, or  
5 extend or renew any contract for a term of 18 months  
6 or more, for any vessel, aircraft, or vehicle, through a  
7 lease, charter, or similar agreement without previously  
8 having considered all costs of such lease (including esti-  
9 mated termination liability) and determined in writing  
10 that such lease is in the best interest of the Government.”.

11       (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions at the beginning of such chapter is amended  
13 by adding at the end the following:

“2410e. Leases of vessels, aircraft, and vehicles.”.

14       (b) REPEAL OF SUPERSEDED PROVISION.—Section  
15 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.  
16 2401 note) is repealed.

1 **TITLE IV—SIMPLIFIED ACQUISITION**  
2 **THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS,**  
3 **AND MISCELLANEOUS**  
4 **LAWS**

6 **Subtitle A—Simplified Acquisition**  
7 **Threshold**

8 **PART I—ESTABLISHMENT OF THRESHOLD**

9 **SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.**

10 (a) **TERM DEFINED.**—Section 4(11) of the Office of  
11 Federal Procurement Policy Act (41 U.S.C. 403(11)) is  
12 amended to read as follows:

13 “(11) The term ‘simplified acquisition thresh-  
14 old’ means \$100,000.”.

15 (b) **INTERIM REPORTING RULE.**—Until October 1,  
16 1996, contracting activities shall continue to report pro-  
17 curement awards with a dollar value of at least \$25,000,  
18 but less than \$100,000, in conformity with the procedures  
19 for the reporting of a contract award in excess of \$25,000  
20 that were in effect on October 1, 1992.

21 **PART II—SIMPLIFICATION OF PROCEDURES**

22 **SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.**

23 The Office of Federal Procurement Policy Act (41  
24 U.S.C. 401 et seq.) is amended by adding at the end the  
25 following new section:



1           “SIMPLIFIED ACQUISITION PROCEDURES

2           “SEC. 29. (a) In order to promote efficiency and  
3 economy in contracting and to avoid unnecessary burdens  
4 for agencies and contractors, the Federal Acquisition Reg-  
5 ulation shall provide for special simplified procedures for  
6 contracts for acquisition of property and services that are  
7 not in excess of the simplified acquisition threshold.

8           “(b) A proposed purchase or contract for an amount  
9 above the simplified acquisition threshold may not be di-  
10 vided into several purchases or contracts for lesser  
11 amounts in order to use the simplified acquisition proce-  
12 dures required by subsection (a).

13           “(c) In using simplified acquisition procedures, the  
14 head of an executive agency shall promote competition to  
15 the maximum extent practicable.”.

16 **SEC. 4012. SMALL BUSINESS RESERVATION.**

17           Section 15(j) of the Small Business Act (15 U.S.C.  
18 644(j)) is amended to read as follows:

19           “(j)(1) Each contract for the procurement of goods  
20 and services that has an anticipated value not in excess  
21 of the simplified acquisition threshold and that is subject  
22 to simplified acquisition procedures prescribed pursuant to  
23 section 29 of the Office of Federal Procurement Policy  
24 Act shall be reserved exclusively for small business con-  
25 cerns unless the contracting officer is unable to obtain of-

1 fers from two or more small business concerns that are  
2 competitive with market prices and are competitive with  
3 regard to the quality and delivery of the goods or services  
4 being procured.

5 “(2) In carrying out paragraph (1), a contracting of-  
6 ficer shall consider a responsive offer timely received from  
7 an eligible small business offeror.

8 “(3) Nothing in paragraph (1) shall be construed as  
9 precluding an award of a contract with a value not in ex-  
10 cess of the simplified acquisition threshold under the au-  
11 thority of section 8(a) of this Act, section 2323 of title  
12 10, United States Code, or section 712 of the Business  
13 Opportunity Development Reform Act of 1988 (Public  
14 Law 100-656; 15 U.S.C. 644 note).

15 “(4) In utilizing procedures referred to in paragraph  
16 (1), contracting officers shall, wherever circumstances per-  
17 mit, provide for the use of fast payment terms and dis-  
18 bursement of payment through electronic fund transfer.”.

19 **SEC. 4013. PROCUREMENT NOTICE.**

20 (a) CONTINUATION OF EXISTING NOTICE THRESH-  
21 OLDS.—Subsection (a) of section 18 of the Office of Fed-  
22 eral Procurement Policy Act (41 U.S.C. 416) is  
23 amended—

(1) in paragraph (1), by striking out “the small purchase threshold” each place it appears and inserting in lieu thereof “\$25,000”; and

(2) in paragraph (3)(B), by inserting after “(B)” the following: “in the case of a contract or order expected to exceed the simplified acquisition threshold,”.

(b) CONTENT OF NOTICE.—Subsection (b) of such section is amended—

(1) by striking out “and” at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

“(6) in the case of a contract in an amount estimated to exceed the \$25,000 but not to exceed the simplified acquisition threshold—

“(A) a description of the procedures to be used in awarding the contract; and

“(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.”.

(c) NOTICE UNDER THE SMALL BUSINESS ACT.—

1           (1) CONTINUATION OF EXISTING NOTICE  
2 THRESHOLDS.—Subsection (e) of section 8 of the  
3 Small Business Act (15 U.S.C. 637) is amended—

4           (A) in paragraph (1), by striking out “the  
5 small purchase threshold” each place it appears  
6 and inserting in lieu thereof “\$25,000”; and

7           (B) in paragraph (3)(B), by inserting after  
8 “(B)” the following: “in the case of a contract  
9 or order estimated to exceed the simplified ac-  
10 quisition threshold,”.

11          (2) CONTENT OF NOTICE.—Subsection (f) of  
12 such section is amended—

13           (A) by striking out “and” at the end of  
14 paragraph (4);

15           (B) by striking out the period at the end  
16 of paragraph (5) and inserting in lieu thereof a  
17 semicolon; and

18           (C) by adding at the end the following:

19           “(6) in the case of a contract in an amount es-  
20 timated to exceed the \$25,000 but not to exceed the  
21 simplified acquisition threshold—

22           “(A) a description of the procedures to be  
23 used in awarding the contract; and

24           “(B) a statement specifying the periods for  
25 prospective offerors and the contracting officer



to take the necessary preaward and award actions.”.

**PART III—INAPPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD**

**Subpart A—Generally**

**SEC. 4021. INAPPLICABILITY OF FUTURE ENACTED PROCUREMENT LAWS TO CONTRACTS NOT EXCEEDING THE SIMPLIFIED ACQUISITION THRESHOLD.**

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4011, is further amended by adding at the end the following new section:

**“INAPPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD**

**“SEC. 30. (a) IN GENERAL.—**The applicability of a provision of law described in subsection (b) to contracts not in excess of the simplified acquisition threshold may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

**“(b) REFERENCED LAW.—**A provision of law referred to in subsection (a) is any provision of law enacted after the date of the enactment of the Federal Acquisition

1 Streamlining Act of 1993 that, as determined by the Ad-  
2 ministrator for Federal Procurement Policy, sets forth  
3 policies, procedures, requirements, or restrictions for the  
4 procurement of property or services by the Federal Gov-  
5 ernment.”.

6 **Subpart B—Armed Services Acquisitions**

7 **SEC. 4031. INAPPLICABILITY OF REQUIREMENT FOR CON-**  
8 **TRACT CLAUSE REGARDING CONTINGENT**  
9 **FEEES.**

10 Section 2306(b) of title 10, United States Code, is  
11 amended by adding at the end the following: “This sub-  
12 section does not apply to a contract that is not in excess  
13 of the simplified acquisition threshold.”.

14 **SEC. 4032. INAPPLICABILITY OF PROHIBITION ON LIMITING**  
15 **SUBCONTRACTOR DIRECT SALES TO THE**  
16 **UNITED STATES.**

17 Section 2402 of title 10, United States Code, is  
18 amended by adding at the end the following new sub-  
19 section:

20 “(c) This section does not apply to a contract that  
21 is not in excess of the simplified acquisition threshold (as  
22 defined in section 4(11) of the Office of Federal Procure-  
23 ment Policy Act (41 U.S.C. 403(11))).”.

1 **SEC. 4033. INAPPLICABILITY OF AUTHORITY TO EXAMINE**  
2 **BOOKS AND RECORDS OF CONTRACTORS.**

3 Section 2313 of title 10, United States Code, as  
4 amended by section 2201, is further amended by adding  
5 at the end of subsection (e) the following:

6 “(2) A contract that is not in excess of the sim-  
7 plified acquisition threshold.”.

8 **SEC. 4034. INAPPLICABILITY OF REQUIREMENT TO IDEN-**  
9 **TIFY SUPPLIERS AND SOURCES OF SUPPLIES.**

10 Section 2384(b) of title 10, United States Code, is  
11 amended by adding at the end the following new para-  
12 graph:

13 “(3) The regulations prescribed pursuant to para-  
14 graph (1) do not apply to a contract that does not exceed  
15 the simplified acquisition threshold (as defined in section  
16 4(11) of the Office of Federal Procurement Policy Act (41  
17 U.S.C. 403(11))).”.

18 **SEC. 4035. INAPPLICABILITY OF PROHIBITION AGAINST**  
19 **DOING BUSINESS WITH CERTAIN OFFERORS**  
20 **OR CONTRACTORS.**

21 Section 2393(d) of title 10, United States Code, is  
22 amended in the second sentence by striking out “above”  
23 and all that follows and inserting in lieu thereof “in excess  
24 of the simplified acquisition threshold (as defined in sec-  
25 tion 4(11) of the Office of Federal Procurement Policy  
26 Act (41 U.S.C. 403(11))).”.

1 **SEC. 4036. INAPPLICABILITY OF PREFERENCE FOR USE OF**  
 2 **UNITED STATES VESSELS FOR TRANSPORT-**  
 3 **ING SUPPLIES OF THE ARMED FORCES.**

4 Section 2631 of title 10, United States Code, is  
 5 amended by adding at the end the following: "The first  
 6 sentence does not apply to a contract for the transpor-  
 7 tation of those supplies by sea if the contract does not  
 8 exceed the simplified acquisition threshold (as defined in  
 9 section 4(11) of the Office of Federal Procurement Policy  
 10 Act (41 U.S.C. 403(11))).".

11 **Subpart C—Civilian Agency Acquisitions**

12 **SEC. 4041. INAPPLICABILITY OF REQUIREMENT FOR CON-**  
 13 **TRACT CLAUSE REGARDING CONTINGENT**  
 14 **FEES.**

15 Section 304(a) of the Federal Property and Adminis-  
 16 trative Services Act of 1949 (41 U.S.C. 254(a)) is amend-  
 17 ed by adding at the end the following: "The preceding sen-  
 18 tence does not apply to a contract that is not in excess  
 19 of the simplified acquisition threshold.".

20 **SEC. 4042. INAPPLICABILITY OF PROHIBITION ON LIMITING**  
 21 **SUBCONTRACTOR DIRECT SALES TO THE**  
 22 **UNITED STATES.**

23 Section 303G of the Federal Property and Adminis-  
 24 trative Services Act of 1949 (41 U.S.C. 253g) is amended  
 25 by adding at the end the following new subsection:



1 “(c) This section does not apply to a contract that  
2 is not in excess of the simplified acquisition threshold.”.

3 **SEC. 4043. INAPPLICABILITY OF AUTHORITY TO EXAMINE**  
4 **BOOKS AND RECORDS OF CONTRACTORS.**

5 Section 304B of the Federal Property and Adminis-  
6 trative Services Act of 1949, as added by section 2251(a),  
7 is amended by adding at the end of subsection (e) the fol-  
8 lowing:

9 “(2) A contract that is not in excess of the sim-  
10 plified acquisition threshold.”.

11 **Subpart D—Acquisitions Generally**

12 **SEC. 4051. INAPPLICABILITY OF LIMITATION ON USE OF**  
13 **FUNDS TO INFLUENCE CERTAIN FEDERAL**  
14 **ACTIONS.**

15 Section 1352(e)(2)(B) of title 31, United States  
16 Code, is amended by striking out “\$100,000” and insert-  
17 ing in lieu thereof “the simplified acquisition threshold (as  
18 defined in section 4(11) of the Office of Federal Procure-  
19 ment Policy Act (41 U.S.C. 403(11)))”.

20 **SEC. 4052. INAPPLICABILITY OF REQUIREMENT FOR CON-**  
21 **TRACT CLAUSE RELATING TO KICKBACKS.**

22 Section 7 of the Anti-Kickback Act of 1986 (41  
23 U.S.C. 57) is amended by adding at the end the following  
24 new subsection:

1       “(d) Subsections (a) and (b) do not apply to a prime  
2 contract that is not in excess of the simplified acquisition  
3 threshold (as defined in section 4(11) of the Office of Fed-  
4 eral Procurement Policy Act (41 U.S.C. 403(11))).”.

5 **SEC. 4053. INAPPLICABILITY OF THE MILLER ACT TO CON-**  
6 **TRACTS BELOW THE SIMPLIFIED ACQUI-**  
7 **SION THRESHOLD.**

8       (a) IN GENERAL.—

9       (1) CONTRACTS NOT EXCEEDING SIMPLIFIED  
10 ACQUISITION THRESHOLD.—The Act of August 24,  
11 1935 (40 U.S.C. 270a et seq.), commonly referred  
12 to as the “Miller Act”, is amended by adding at the  
13 end the following new section:

14       “SEC. 5. This Act does not apply to a contract in  
15 an amount that is not in excess of the simplified acqui-  
16 sition threshold (as defined in section 4(11) of the Office  
17 of Federal Procurement Policy Act (41 U.S.C.  
18 403(11))).”.

19       (2) CONFORMING AMENDMENT.—Subsection (a)  
20 of the first section of such Act is amended by strik-  
21 ing out “, exceeding \$25,000 in amount,”.

22       (b) ALTERNATIVE PAYMENT PROTECTIONS.—

23       (1) REGULATIONS REQUIRED.—The Federal  
24 Acquisition Regulation shall provide alternatives to  
25 payment bonds as payment protections for suppliers

of labor and materials on contracts referred to in paragraph (2).

(2) COVERED CONTRACTS.—The protections required by paragraph (1) shall apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act that are in excess of \$25,000 but not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(3) MILLER ACT REFERENCE.—The Miller Act referred to in paragraph (2) means the Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the “Miller Act”.

**SEC. 4054. INAPPLICABILITY OF CONTRACT WORK HOURS  
AND SAFETY STANDARDS ACT.**

(a) IN GENERAL.—Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 329) is amended by adding at the end the following new subsection:

“(c) This title does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).”.

1 (b) CONFORMING AMENDMENT.—Section 107(a) of  
 2 such Act (40 U.S.C. 333(a)) is amended by inserting after  
 3 “It shall be a condition of each contract” the following:  
 4 “(other than a contract referred to in section 103(c))”.

5 **SEC. 4055. INAPPLICABILITY OF THE DRUG-FREE WORK-**  
 6 **PLACE ACT OF 1988.**

7 Section 5152(a)(1) of the Drug-Free Workplace Act  
 8 of 1988 (subtitle D of title V of the Anti-Drug Abuse Act  
 9 of 1988; Public Law 100–690; 41 U.S.C. 701(a)(1)) is  
 10 amended by striking out “of \$25,000 or more from any  
 11 Federal agency” and inserting in lieu thereof “in excess  
 12 of the simplified acquisition threshold (as defined in sec-  
 13 tion 4(11) of such Act (41 U.S.C. 403(11))) by any Fed-  
 14 eral agency”.

15 **SEC. 4056. INAPPLICABILITY OF A REQUIREMENT IN THE**  
 16 **MERCHANT MARINE ACT, 1936, TO SHIP ON**  
 17 **AMERICAN-FLAG COMMERCIAL VESSELS.**

18 Section 901(b) of the Merchant Marine Act, 1936 (46  
 19 U.S.C. 1241(b)) is amended by adding at the end the fol-  
 20 lowing new paragraph:

21 “(3) Paragraph (1) does not apply to a contract for  
 22 transportation on ocean vessels in an amount that is not  
 23 in excess of the simplified acquisition threshold (as defined  
 24 in section 4(11) of the Office of Federal Procurement Pol-  
 25 icy Act (41 U.S.C. 403(11))). The gross tonnage trans-



1 ported under such a contract may not be counted for pur-  
 2 poses of determining the minimum gross tonnage required  
 3 to be transported on privately owned United States-flag  
 4 commercial vessels or for purposes of satisfying such re-  
 5 quirement.”.

6 **SEC. 4057. INAPPLICABILITY OF CERTAIN PROCUREMENT**  
 7 **INTEGRITY REQUIREMENTS.**

8 (a) **CERTIFICATION REQUIREMENT.**—Subsection  
 9 (e)(7)(A) of section 18 of the Office of Federal Procure-  
 10 ment Policy Act (41 U.S.C. 423) is amended by striking  
 11 out “\$100,000” and inserting in lieu thereof “the sim-  
 12 plified acquisition threshold”.

13 (b) **CONTRACT CLAUSE REQUIREMENT.**—Subsection  
 14 (g)(1) of such section is amended by inserting after  
 15 “awarded by a Federal agency” the following: “(other  
 16 than a contract in an amount that is not in excess of the  
 17 simplified acquisition threshold)”.

18 **PART IV—CONFORMING AMENDMENTS**

19 **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

20 (a) **SIMPLIFIED ACQUISITION PROCEDURES.**—Sec-  
 21 tion 2304(g) of title 10, United States Code, is amended—

22 (1) in paragraph (1), by striking out “small  
 23 purchases of property and services” and inserting in  
 24 lieu thereof “purchases of property and services not  
 25 in excess of the simplified acquisition threshold”;

1           (2) by striking out paragraph (2);  
2           (3) by redesignating paragraphs (3) and (4) as  
3 paragraphs (2) and (3), respectively;

4           (4) in paragraph (2), as so redesignated—

5               (A) by striking out “small purchase  
6 threshold” and inserting in lieu thereof “sim-  
7 plified acquisition threshold”; and

8               (B) by striking out “small purchase proce-  
9 dures” and inserting in lieu thereof “simplified  
10 procedures”; and

11          (5) in paragraph (3), as redesignated by para-  
12 graph (3), by striking out “small purchase proce-  
13 dures” and inserting in lieu thereof “simplified pro-  
14 cedures”.

15          (b) SOLICITATION CONTENT REQUIREMENT.—Sec-  
16 tion 2305(a)(2) of title 10, United States Code, is amend-  
17 ed by striking out “small purchases)” in the matter above  
18 subparagraph (A) and inserting in lieu thereof “purchases  
19 not in excess of the simplified acquisition threshold)”.

20          (c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A)  
21 of title 10, United States Code, is amended by striking  
22 out “small purchase threshold” and inserting in lieu there-  
23 of “simplified acquisition threshold”.

1 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

2 (a) SIMPLIFIED ACQUISITION PROCEDURES.—Sec-  
3 tion 303(g) of the Federal Property and Administrative  
4 Services Act of 1949 (41 U.S.C. 253(g)) is amended—

5 (1) in paragraph (1), by striking out “small  
6 purchases of property and services” and inserting in  
7 lieu thereof “purchases of property and services not  
8 in excess of the simplified acquisition threshold”;

9 (2) by striking out paragraph (2);

10 (3) by redesignating paragraphs (3), (4), and  
11 (5) as paragraphs (2), (3), and (4), respectively;

12 (4) in paragraph (2), as so redesignated—

13 (A) by striking out “small purchase  
14 threshold” and inserting in lieu thereof “sim-  
15 plified acquisition threshold”; and

16 (B) by striking out “small purchase proce-  
17 dures” and inserting in lieu thereof “simplified  
18 procedures”;

19 (5) in paragraph (3), as redesignated by para-  
20 graph (3), by striking out “small purchase proce-  
21 dures” and inserting in lieu thereof “simplified pro-  
22 cedures”; and

23 (6) in paragraph (5), as redesignated by para-  
24 graph (3), by striking out “the term ‘small purchase  
25 threshold’ has the meaning” and inserting in lieu

1       thereof “the term ‘simplified acquisition threshold’  
2       has the meaning”.

3       (b) SOLICITATION CONTENT REQUIREMENT.—Sec-  
4       tion 303A(b) of the Federal Property and Administrative  
5       Services Act of 1949 (41 U.S.C. 253a(b)) is amended by  
6       striking out “small purchases)” in the matter above para-  
7       graph (1) and inserting in lieu thereof “purchases not in  
8       excess of the simplified acquisition threshold)”.

9       (c) COST TYPE CONTRACTS.—Section 304(b) of the  
10      Federal Property and Administrative Services Act of 1949  
11      (41 U.S.C. 254(b)) is amended in the third sentence by  
12      striking out “either \$25,000” and inserting in lieu thereof  
13      “either the simplified acquisition threshold”.

14   **SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY**  
15                           **ACT.**

16      Section 19(a) of the Office of Federal Procurement  
17      Policy Act (41 U.S.C. 417(a)) is amended by striking out  
18      “procurements, other than small purchases,” and insert-  
19      ing in lieu thereof “procurements in excess of the sim-  
20      plified acquisition threshold”.

21   **SEC. 4074. SMALL BUSINESS ACT.**

22      (a) DEFINITION.—Section 3(m) of the Small Busi-  
23      ness Act (15 U.S.C. 632(m)) is amended by striking out  
24      “‘small purchase threshold’” and inserting in lieu thereof  
25      “‘simplified acquisition threshold’”.



1       (b) **USE OF SIMPLIFIED ACQUISITION THRESHOLD**  
2 **TERM.**—Section 8(d)(2)(A) of the Small Business Act (15  
3 U.S.C. 637(d)(2)(A)) is amended by striking out “small  
4 purchase threshold” and inserting in lieu thereof “sim-  
5 plified acquisition threshold”.

6               **PART V—REVISION OF REGULATIONS**

7 **SEC. 4081. REVISION REQUIRED.**

8       (a) **FEDERAL ACQUISITION REGULATION.**—The Fed-  
9 eral Acquisition Regulatory Council established by section  
10 25(a) of the Office of Federal Procurement Policy Act (41  
11 U.S.C. 421(a)) shall review the Federal Acquisition Regu-  
12 lation to identify regulations that are applicable to acquisi-  
13 tions in excess of a specified amount that is less than  
14 \$100,000. The Council shall amend the regulations so  
15 identified as necessary to provide that such regulations do  
16 not apply to acquisitions that are not in excess of the sim-  
17 plified acquisition threshold. The preceding sentence does  
18 not apply in the case of a regulation for which such an  
19 amendment would not be in the national interest, as deter-  
20 mined by the Council.

21       (b) **SUPPLEMENTAL REGULATIONS.**—The head of  
22 each Federal agency that has issued regulations, policies,  
23 or procedures referred to in subsection (c)(2) of the Office  
24 of Federal Procurement Policy Act (41 U.S.C. 421(c)(2))  
25 shall identify any such regulations, policies, or procedures

1 that are applicable to acquisitions in excess of a specified  
2 amount that is less than \$100,000. The agency head shall  
3 amend the regulations so identified as necessary to provide  
4 that such regulations, policies, and procedures do not  
5 apply to acquisitions that are not in excess of the sim-  
6 plified acquisition threshold. The preceding sentence does  
7 not apply in the case of a regulation, policy, or procedure  
8 for which such an amendment would not be in the national  
9 interest, as determined by the agency head.

10 (c) COMPLETION OF ACTIONS.—All actions under  
11 this section shall be completed not later than 180 days  
12 after the date of the enactment of this Act.

13 (d) DEFINITIONS.—In this section:

14 (1) The term “simplified acquisition threshold”  
15 has the meaning given such term in section 4(11) of  
16 the Office of Federal Procurement Policy Act (41  
17 U.S.C. 403(11)), as amended by section 4001.

18 (2) The term “Federal agency” has the mean-  
19 ing given such term in section 3(b) of the Federal  
20 Property and Administrative Services Act of 1949  
21 (41 U.S.C. 472(b)).

## **Subtitle B—Socioeconomic and Small Business Laws**

### **SEC. 4101. ARMED SERVICES ACQUISITIONS.**

(a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO CONSTRUCTION OF NAVAL VESSELS.—Section 7299 of title 10, United States Code, is amended to read as follows: “No contract for the construction, alteration, furnishing, or equipping of a naval vessel shall be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to as the ‘Davis-Bacon Act’, or to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the President determines that such requirement is in the interest of national defense.”.

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

**“§ 7299. Contracts: applicability of certain labor laws”.**

(2) The item relating to such section in the table of sections at the beginning of chapter 633 of title 10, United States Code, is amended to read as follows:

“7299. Contracts: applicability of certain labor laws.”.

### **SEC. 4102. ACQUISITIONS GENERALLY.**

(a) REPEAL OF EXECUTED REPORTING REQUIREMENT.—Section 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2516) is repealed.

1 (b) WALSH-HEALEY ACT.—

2 (1) REPEAL OTHER THAN FOR CERTAIN DEFINI-  
3 TIONAL PURPOSES.—The Act of June 30, 1936  
4 (41 U.S.C. 35 et seq.), commonly referred to as the  
5 “Walsh-Healey Act”, is amended to read as follows:

6 “SECTION 1. (a) The Secretary of Labor may pre-  
7 scribe in regulations the standards for determining wheth-  
8 er a contractor is a manufacturer of or a regular dealer  
9 in materials, supplies, articles, or equipment to be manu-  
10 factured or used in the performance of a contract entered  
11 into by any executive department, independent establish-  
12 ment, or other agency or instrumentality of the United  
13 States, or by the District of Columbia, or by any corpora-  
14 tion all the stock of which is beneficially owned by the  
15 United States, for the manufacture or furnishing of mate-  
16 rials, supplies, articles, and equipment.

17 “(b) Any interested person shall have the right of ju-  
18 dicial review of any legal question regarding the interpre-  
19 tation of the terms ‘regular dealer’ and ‘manufacturer’,  
20 as defined pursuant to subsection (a).”

21 (2) CONFORMING AMENDMENT.—Section  
22 2304(h) of title 10, United States Code, is amended  
23 to read as follows:

24 “(h) For the purposes of the Act entitled ‘An Act  
25 relating to the rate of wages for laborers and mechanics



1 employed on public buildings of the United States and the  
2 District of Columbia by contractors and subcontractors,  
3 and for other purposes', approved March 3, 1931 (com-  
4 monly referred to as the 'Davis-Bacon Act') (40 U.S.C.  
5 276a et seq.), purchases or contracts awarded after using  
6 procedures other than sealed-bid procedures shall be treat-  
7 ed as if they were made with sealed-bid procedures."

8 (c) REPEAL OF REDUNDANT REQUIREMENT RE-  
9 GARDING APPLICABILITY OF THE DAVIS-BACON ACT AND  
10 THE WALSH-HEALEY ACT.—Section 308 of the Federal  
11 Property and Administrative Services Act of 1949 (41  
12 U.S.C. 258) is repealed.

13 (d) PROHIBITION ON CONVICT LABOR AND PRISON  
14 GOODS.—No agency of the United States shall purchase  
15 any goods, wares or merchandise whose transportation in  
16 interstate commerce, or whose importation, is prohibited  
17 by section 1761 of title 18, United States Code. The pre-  
18 ceding sentence does not apply to a contract in an amount  
19 that does not exceed the simplified acquisition threshold  
20 (as defined in section 4(11) of the Office of Federal Pro-  
21 curement Policy Act (41 U.S.C. 403(11))).

22 **SEC. 4103. DIRECT CONTRACTING WITH SMALL BUSI-**  
23 **NESSES.**

24 Section 8(a)(1) of the Small Business Act (15 U.S.C.  
25 637(a)(1)) is amended in subparagraph (A) by striking

1 out “In any case in which the Administration certifies”  
2 and all that follows through “may be agreed upon between  
3 the Administration and the procurement officer.” and in-  
4 serting in lieu thereof the following: “In any case in which  
5 the Administration certifies to any officer of the Govern-  
6 ment having procurement powers that the Administration  
7 is competent and responsible to perform any specific Gov-  
8 ernment procurement contract to be awarded by any such  
9 officer, such officer shall be authorized in his discretion  
10 (i) to award such procurement contract to the Administra-  
11 tion upon such terms and conditions as may be agreed  
12 upon between the Administration and the procurement of-  
13 ficer, or (ii) to award such procurement contract directly  
14 to a socially and economically disadvantaged small busi-  
15 ness concern designated by the Administration, except  
16 that such contract may not be awarded directly to that  
17 small business concern if the small business concern re-  
18 quests that the award be made through the Administra-  
19 tion.”.

## Subtitle C—Miscellaneous Acquisition Laws

### SEC. 4151. REPEAL OF OBSOLETE LAWS RELATING TO PRO- CUREMENT OF NAVAL AIRCRAFT AND COM- PONENTS.

(a) AUTHORIZED NUMBER.—Section 7341 of title 10, United States Code, is repealed.

(b) CONSTRUCTION OR MANUFACTURE IN FEDERAL GOVERNMENT PLANTS.—

(1) MINIMUM PERCENTAGE.—Section 7342 of title 10, United States Code, is repealed.

(2) AUTHORIZATION UNDER CERTAIN CIRCUMSTANCES.—Section 7343 of title 10, United States Code, is repealed.

(c) ANNUAL REPORT OF NAVY AIRCRAFT REQUIREMENTS.—Section 7345 of title 10, United States Code, is repealed.

(d) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 635 of title 10, United States Code, is amended by striking out the items relating to sections 7341, 7342, 7343, and 7345.

1   **SEC. 4152. REVISION AND CODIFICATION OF PROHIBITION**  
2                           **ON USE OF FUNDS FOR DOCUMENTING ECO-**  
3                           **NOMIC OR EMPLOYMENT IMPACT OF CER-**  
4                           **TAIN ACQUISITION PROGRAMS.**

5       (a) **IN GENERAL.**—Subchapter I of chapter 134 of  
6 title 10, United States Code, is amended by adding at the  
7 end the following new section:

8   **“§ 2246. Prohibition on use of funds for documenting**  
9                           **economic or employment impact of cer-**  
10                          **tain acquisition programs**

11       “No funds appropriated by the Congress may be obli-  
12 gated or expended to assist any contractor of the Depart-  
13 ment of Defense in preparing any material, report, lists,  
14 or analysis with respect to the actual or projected eco-  
15 nomic or employment impact in a particular State or con-  
16 gressional district of an acquisition program for which all  
17 research, development, testing, and evaluation has not  
18 been completed.”.

19       (b) **CLERICAL AMENDMENT.**—The table of sections  
20 at the beginning of such subchapter is amended by adding  
21 at the end the following new item:

“2246. Prohibition on use of funds for documenting economic or employment  
impact of certain acquisition programs.”.



**SEC. 4153. RESTRICTION ON USE OF NONCOMPETITIVE  
PROCEDURES FOR PROCUREMENT FROM A  
PARTICULAR SOURCE.**

(a) **ARMED SERVICES ACQUISITIONS.**—Section 2304 of title 10, United States Code, as amended by section 1005(b), is further amended—

(1) in subsection (c)(5), by inserting “subject to subsection (j),” after “(5)”; and

(2) by adding at the end the following new subsection:

“(j)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.

“(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—

“(A) specifically refers to this subsection;

“(B) specifically identifies the particular non-Federal Government source involved; and

“(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).”.

(b) **CIVILIAN AGENCY ACQUISITIONS.**—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

1 (1) in subsection (c)(5), by inserting “subject to  
2 subsection (h),” after “(5)”;

3 (2) by adding at the end the following new sub-  
4 section:

5 “(h)(1) It is the policy of Congress that no legislation  
6 should be enacted that requires a procurement to be made  
7 from a specified non-Federal Government source.

8 “(2) A provision of law may not be construed as re-  
9 quiring a procurement to be made from a specified non-  
10 Federal Government source unless that provision of law—

11 “(A) specifically refers to this subsection;

12 “(B) specifically identifies the particular non-  
13 Federal Government source involved; and

14 “(C) specifically states that the procurement  
15 from that source is required by such provision of law  
16 in contravention of the policy set forth in paragraph  
17 (1).”.

## 18 **TITLE V—INTELLECTUAL** 19 **PROPERTY**

### 20 **Subtitle A—Technology Transfer**

#### 21 **SEC. 5001. COPYRIGHT PROTECTION FOR COMPUTER PRO-** 22 **GRAMS OF THE FEDERAL GOVERNMENT.**

23 (a) GENERAL AUTHORITY TO COPYRIGHT.—Section  
24 15 of the Stevenson-Wydler Technology Innovation Act of  
25 1980 (15 U.S.C. 3710d) is amended—

1 (1) by redesignating subsections (b) and (c) as  
2 subsections (c) and (d), respectively; and

3 (2) by inserting after subsection (a) the follow-  
4 ing new subsection (b):

5 “(b) RIGHTS TO COMPUTER PROGRAMS PREPARED  
6 BY GOVERNMENT EMPLOYEES.—(1) For purposes of title  
7 17, United States Code—

8 “(A) a computer program prepared by an offi-  
9 cer or employee of the Federal Government in the  
10 course of the officer’s or employee’s official duties  
11 shall be considered as a work made for hire within  
12 the meaning of paragraph (1) of the definition of the  
13 term ‘work made for hire’ set forth in section 101  
14 of such title; and

15 “(B) notwithstanding section 105 of such title,  
16 the Federal Government shall be considered the au-  
17 thor of the computer program for purposes of sec-  
18 tion 201(b) of such title.

19 “(2)(A) If the Federal agency concerned does not in-  
20 tend to register a copyright of the computer program or  
21 otherwise to promote the commercialization of the com-  
22 puter program, the Federal agency may enter into an  
23 agreement with the officer or employee of the Federal  
24 Government who prepared the computer program to allow  
25 such officer or employee to own a copyright protecting

1 such computer program under title 17, United States  
2 Code.

3 “(B) The agreement shall be a written instrument  
4 that satisfies the requirements of section 201(b) of title  
5 17, United States Code.

6 “(C) The agreement shall include—

7 “(i) a reservation for the Federal Government  
8 of a nonexclusive, nontransferable, irrevocable, paid-  
9 up license to exercise all rights under the copyright  
10 by or on behalf of the Federal Government through-  
11 out the world; and

12 “(ii) such other reservations as the head of the  
13 Federal agency concerned considers necessary to en-  
14 sure distribution and utilization of the computer pro-  
15 gram.

16 “(3) In this subsection, the term ‘computer program’  
17 has the meaning given such term in section 101 of title  
18 17, United States Code.”.

19 (b) WORKS IN CONNECTION WITH COOPERATIVE RE-  
20 SEARCH AND DEVELOPMENT AGREEMENTS.—

21 (1) COPYRIGHT PROTECTION FOR THE UNITED  
22 STATES.—Section 12 of the Stevenson-Wydler Tech-  
23 nology Innovation Act of 1980 (15 U.S.C. 3710a) is  
24 amended by adding at the end the following new  
25 subsection:



1       “(h) COPYRIGHT OF COMPUTER PROGRAMS.—(1)

2   Notwithstanding section 105 of title 17, United States  
3   Code, a Federal agency may secure, on behalf of the  
4   United States as author or proprietor, copyright protec-  
5   tion for any computer program prepared by an employee  
6   of the Federal Government in the course of work under,  
7   or work related to, a cooperative research and development  
8   agreement entered into by such Federal agency under the  
9   authority of subsection (a)(1) or under any similar author-  
10   ity.

11       “(2) A Federal agency may grant or agree to grant  
12   in advance to a collaborating party licenses or assignments  
13   for a copyright of a computer program registered pursuant  
14   to paragraph (1), or options thereto, retaining—

15       “(A) a nonexclusive, nontransferable, irrev-  
16   ocable, paid-up license to reproduce, adapt, trans-  
17   late, distribute, and publicly perform or display the  
18   computer program throughout the world by or on  
19   behalf of the Federal Government; and

20       “(B) such other rights that the Federal agency  
21   deems appropriate.”.

22       (2) COMPUTER PROGRAM DEFINED.—Sub-  
23   section (d) of such section is amended—

24       (A) by striking out “section—” and insert-  
25   ing in lieu thereof “section:”;

1 (B) by capitalizing the initial letter of the  
 2 first word in each of paragraphs (1), (2), and  
 3 (3);

4 (C) by striking out the semicolon at the  
 5 end of paragraph (1) and inserting in lieu  
 6 thereof a period;

7 (D) in paragraph (2), by striking out “;  
 8 and” at the end and inserting in lieu thereof a  
 9 period; and

10 (E) by adding at the end the following new  
 11 paragraph:

12 “(5) The term ‘computer program’ has the  
 13 meaning given such term in section 101 of title 17,  
 14 United States Code.”.

15 **SEC. 5002. USE OF COPYRIGHTED WORKS OF THE FEDERAL**  
 16 **GOVERNMENT.**

17 Section 12 of the Stevenson-Wydler Technology Inno-  
 18 vation Act of 1980 (15 U.S.C. 3710a) is amended—

19 (1) in subsection (a)—

20 (A) in paragraph (1)—

21 (i) by inserting “or copyrighted  
 22 works” after “(including licensees of inven-  
 23 tions”; and

24 (ii) by striking out “and” at the end;

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof “; and”;

(C) by adding at the end the following new paragraph:

“(3) to negotiate licensing agreements consistent with section 207 of title 35, United States Code, or under other authorities (in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for copyrighted works owned by the Federal Government pursuant to subsection (h) or copyrighted works that may be voluntarily assigned to the Federal Government.”;

and

(2) in subsection (b)—

(A) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

“(2) grant or agree to grant in advance, to a collaborating party—

“(A) patent licenses or assignments, or options thereto, in any invention made in whole or in part by a laboratory employee under the agreement, retaining—

“(i) a nonexclusive, nontransferable, irrevocable, paid-up license to practice the

1 invention, or have the invention practiced,  
2 throughout the world by or on behalf of  
3 the Government; and

4 “(ii) such other rights as the Federal  
5 laboratory deems appropriate; and

6 “(B) copyright licenses or assignments, or  
7 options thereto, in any copyrighted work pre-  
8 pared in whole or in part by a laboratory em-  
9 ployee under the agreement, retaining—

10 “(i) a nonexclusive, nontransferable,  
11 irrevocable, paid-up license to exercise all  
12 rights under the copyright, or have all  
13 rights under the copyright exercised,  
14 throughout the world by or on behalf of  
15 the Government; and

16 “(ii) such other rights as the Federal  
17 laboratory deems appropriate;

18 “(3) waive in advance, in whole or in part, any  
19 right of ownership which the Federal Government  
20 may have to—

21 “(A) any subject invention made under the  
22 agreement by a collaborating party or employee  
23 of a collaborating party, subject to reservation  
24 by the Government of a nonexclusive, irrev-  
25 ocable, paid-up license to practice the invention,



1 or have the invention practiced, throughout the  
2 world by or on behalf of the Government; or

3 “(B) any subject copyrighted work pre-  
4 pared under the agreement by a collaborating  
5 party or employee of a collaborating party, sub-  
6 ject to reservation by the Government of a  
7 nonexclusive, irrevocable, paid-up license to re-  
8 produce the copyrighted work, or have the copy-  
9 righted work reproduced, throughout the world  
10 by or on behalf of the Government;”;

11 (B) by striking out paragraph (5) and in-  
12 serting in lieu thereof the following:

13 “(5) to the extent consistent with any applica-  
14 ble agency requirements and standards of conduct,  
15 permit an employee or former employees of the lab-  
16 oratory to participate in efforts to commercialize an  
17 invention that the employee or former employee  
18 made, or a copyrighted work that the employee or  
19 former employee prepared, while in the service of the  
20 United States (notwithstanding that such employee  
21 or former employee may have received royalties pur-  
22 suant to section 14), but only if such employee or  
23 former employee did not participate in the selection  
24 of the collaborating party to the relevant cooperative  
25 research and development agreement or in the nego-

1       tiation of a licensing agreement under which the in-  
 2       vention or copyrighted work, as the case may be, is  
 3       being commercialized.”; and

4               (C) in the matter following paragraph  
 5       (5)—

6               (i) by inserting “or copyrighted work”  
 7       after “any invention”; and

8               (ii) in clause (i), by inserting “or to  
 9       authors of copyrighted works” after “in-  
 10      ventors”.

11   **SEC. 5003. DISTRIBUTION OF ROYALTIES RECEIVED BY**  
 12       **FEDERAL AGENCIES.**

13       (a) COPYRIGHTED WORKS.—Section 14 of the Ste-  
 14   venson-Wydler Technology Innovation Act of 1980 (15  
 15   U.S.C. 3710c) is amended—

16       (1) in subsection (a)—

17               (A) in the matter above subparagraph (A),  
 18       by striking out “inventions under agreements”  
 19       and all that follows through “produced the in-  
 20       vention” and inserting in lieu thereof “an in-  
 21       vention or copyrightable work under an agree-  
 22       ment entered into by a Government-operated  
 23       Federal laboratory under section 12, and an in-  
 24       vention or copyrightable work of a Government-  
 25       operated Federal laboratory licensed under sec-

tion 207 of title 35, United States Code, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention or copyrighted work”;

(B) in paragraph (1)(A)—

(i) in clause (i)—

(I) in the first sentence, by striking out “inventor” and all that follows and inserting in lieu thereof “inventor or copyrighted work to the author (or the co-inventors or co-authors) if the inventor or author (or each such co-inventor or co-author) has assigned his or her rights in the invention or copyrighted work to the United States.”; and

(II) by striking out the second sentence;

(ii) in clause (ii)—

(I) by inserting “or authors” after “inventors” in the matter above subclause (I);

(II) by striking out “inventor,” in subclauses (I) and (II) and insert-

1 ing in lieu thereof “inventor or au-  
2 thor”;

3 (III) by inserting “or author’s  
4 copyrighted work” in subclauses (I)  
5 and (II) after “inventor’s invention”;

6 (IV) in subclause (III), by insert-  
7 ing “and authors” after “such inven-  
8 tors”; and

9 (V) in subclause (IV), by striking  
10 out “licensed invention” and all that  
11 follows and inserting in lieu thereof  
12 “licensed invention between the time  
13 of the filing of the patent application  
14 and the licensing of the invention or  
15 to the technical development of a li-  
16 censed copyrighted work between the  
17 time of the filing of the application for  
18 copyright registration and the licens-  
19 ing of the copyrighted work.”; and

20 (iii) by adding at the end the follow-  
21 ing new clause (iv):

22 “(iv) An agency that has published its intention to  
23 promulgate regulations under clause (ii) with regard to  
24 authors of copyrighted works may elect not to pay authors  
25 under clause (i) until the earlier of the date two years



1 after the date of the enactment of the Federal Acquisition  
2 Streamlining Act of 1993 or the date of the promulgation  
3 of such regulations. If an agency makes such an election  
4 and after two years the regulations have not been promul-  
5 gated, the agency shall make payments (in accordance  
6 with clause (i)) of at least 15 percent of the royalties in-  
7 volved, retroactive to the date of the enactment of the Fed-  
8 eral Acquisition Streamlining Act of 1993. If promulga-  
9 tion of the regulations occurs within two years after the  
10 date of the enactment of the Federal Acquisition Stream-  
11 lining Act of 1993, payments shall be made in accordance  
12 with such regulations, retroactive to such date. The agency  
13 shall retain its royalties until the author's portion is paid  
14 under either clause (i) or (ii). Such royalties may not be  
15 transferred to the agency's Government-operated labora-  
16 tories under subparagraph (B) and may not revert to the  
17 Treasury pursuant to paragraph (2) as a result of any  
18 delay caused by rule making under this subparagraph.”;

19 (C) in paragraph (1)(B)—

20 (i) in the matter above clause (i), by  
21 striking out “going to the laboratory where  
22 the invention occurred” and inserting in  
23 lieu thereof “or copyrighted work going to  
24 the laboratory where the invention oc-

1                   curred or the copyrighted work was pre-  
2                   pared”; and

3                   (ii) in clause (i)—

4                   (I) by inserting “or copyrighted  
5                   works” after “licensing of inventions”;

6                   (II) by inserting “, or copy-  
7                   righted works were prepared,” after  
8                   “inventions which occurred”; and

9                   (III) by inserting “or copyrighted  
10                  work” before “management”;

11                  (D) in paragraph (2), by inserting “and  
12                  authors” after “inventors”;

13                  (E) in paragraph (3), by inserting “or au-  
14                  thor” after “inventor” both places it appears in  
15                  the second sentence; and

16                  (F) in the first sentence of paragraph  
17                  (4)—

18                   (i) by inserting “, or copyrighted work  
19                   management services,” after “management  
20                   services”;

21                   (ii) by inserting “or authors” after  
22                   “inventors”;

23                   (iii) by inserting “or copyrighting”  
24                   after “patenting”; and

(iv) by inserting “or copyright” after

“for any invention”;

(2) in subsection (b)—

(A) in the matter above paragraph (1), by inserting “or copyrightable work” after “invention”; and

(B) in paragraph (2), by striking out “at the time” and all that follows and inserting in lieu thereof “at the time the invention was made or copyrightable work was prepared,”; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by striking out “(1)”; and

(ii) by inserting “or author” after “(including inventor”;

(B) by striking out paragraph (2).

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1)(B)(i)(I) shall take effect with respect to a department or agency of the Federal Government as of the date of the enactment of this Act unless, within 90 days after that date, such department or agency publishes in the Federal Register a notice of election to file a notice of proposed rulemaking with regard to authors of copyrighted works pursuant to section 14(a)(1)(A)(ii) of the

1 Stevenson-Wydler Technology Innovation Act of 1980 (15  
2 U.S.C. 3710c(a)(1)(A)(ii)), as amended by subsection  
3 (a)(1)(B)(ii).

4 **SEC. 5004. EXCEPTION TO PROHIBITION ON COPYRIGHT**  
5 **PROTECTION FOR WORKS OF THE FEDERAL**  
6 **GOVERNMENT.**

7 The text of section 105 of title 17, United States  
8 Code, is amended to read as follows:

9 “(a) Except as provided in subsection (b), copyright  
10 protection under this title is not available for any work  
11 of the United States Government.

12 “(b)(1) Subsection (a) does not preclude the United  
13 States from receiving and holding copyrights transferred  
14 to it by assignment, bequest, or otherwise.

15 “(2) Subsection (a) does not preclude the United  
16 States from copyright protection under this title that is  
17 authorized in section 12(h) or 15(b) of the Stevenson-  
18 Wydler Technology Innovation Act of 1980 (15 U.S.C.  
19 3710a(h) or 3710d(b)).”.



1 **Subtitle B—Government Use of Pri-**  
2 **vate Patents, Copyrights, and**  
3 **Trade Secrets**

4 **SEC. 5011. GOVERNMENT USE OR MANUFACTURE OF A PAT-**  
5 **ENTED INVENTION.**

6 (a) **WITHHOLDING OF GOVERNMENT CONSENT FOR**  
7 **CONTRACTOR USE OR MANUFACTURE.**—The second un-  
8 designated paragraph of section 1498(a) of title 28, Unit-  
9 ed States Code, is amended by inserting after the first  
10 sentence the following: “The Federal Acquisition Regu-  
11 latory Council established under section 25(a) of the Of-  
12 fice of Federal Procurement Policy Act (41 U.S.C. 421(a))  
13 shall prescribe in the Federal Acquisition Regulation the  
14 circumstances under which a contracting officer may with-  
15 hold authorization or consent under this paragraph. The  
16 Federal Acquisition Regulation shall provide that author-  
17 ization or consent may not ordinarily be granted for con-  
18 tracts for the acquisition of commercial items (as defined  
19 in section 4(12) of such Act (41 U.S.C. 403(12))).”.

20 (b) **INJUNCTION NOT AUTHORIZED REGARDING**  
21 **GOVERNMENT CONTRACTOR USE OR MANUFACTURE.**—  
22 Section 283 of title 35, United States Code, is amended  
23 by adding at the end the following: “Notwithstanding the  
24 preceding sentence, no such court may grant an injunction  
25 in the case of a violation of a right secured by patent that

1 occurs in the performance of a Federal Government con-  
2 tract.”.

3 **SEC. 5012. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**  
4 **TELLECTUAL PROPERTY RIGHTS.**

5 (a) **AUTHORIZED ACQUISITIONS.**—Section 2386 of  
6 title 10, United States Code, is amended by striking out  
7 paragraphs (3) and (4) and inserting in lieu thereof the  
8 following:

9 “(3) Technical data and computer software.

10 “(4) Releases for past infringement of patents  
11 or copyrights or for unauthorized use of technical  
12 data or computer software.”.

13 (b) **REDUNDANT PROVISION.**—

14 (1) **REPEAL.**—Section 7210 of title 10, United  
15 States Code, is repealed.

16 (2) **CLERICAL AMENDMENT.**—The table of sec-  
17 tions at the beginning of chapter 631 of such title  
18 is amended by striking out the item relating to sec-  
19 tion 7210.

# **TITLE VI—STANDARDS OF CONDUCT**

## **Subtitle A—Ethics Provisions**

### **SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PRO- CUREMENT POLICY ACT.**

(a) RECUSAL.—Subsection (c) of section 27 of the Office of Procurement Policy Act (41 U.S.C. 423) is amended—

(1) in paragraph (1)—

(A) in the matter above subparagraph (A), by inserting “only” after “subsection (b)(1)”; and

(B) in subparagraph (A), by inserting “(including the modification or extension of a contract)” after “any procurement”;

(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof:

“(2) Whenever the head of a procuring activity approves a recusal under paragraph (1), a copy of the recusal request and the approval of the request shall be retained by such official for a period (not less than five years) specified in regulations prescribed in accordance with subsection (o).

“(3)(A) Except as provided in subparagraph (B), all recusal requests and approvals of recusal requests pursu-

1 ant to this subsection shall be made available to the public  
2 on request.

3 “(B) Any part of a recusal request or an approval  
4 of a recusal request that is exempt from the disclosure  
5 requirements of section 552 of title 5, United States Code,  
6 under subsection (b)(1) of such section may be withheld  
7 from disclosure to the public otherwise required under  
8 subparagraph (A).”; and

9 (3) in paragraph (4), by striking out “compet-  
10 ing contractor” and inserting in lieu thereof “per-  
11 son”.

12 (b) APPLICABILITY OF CERTIFICATION REQUIRE-  
13 MENT.—Subsection (e)(7)(A) of such section is amended  
14 by adding at the end the following: “However, paragraph  
15 (1)(B) does not apply with respect to a contract for less  
16 than \$500,000.”.

17 (c) RESTRICTIONS RESULTING FROM PROCUREMENT  
18 ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection  
19 (f) of such section is amended—

20 (1) by redesignating paragraph (3) as para-  
21 graph (4); and

22 (2) by striking out paragraphs (1) and (2) and  
23 inserting in lieu thereof the following:

24 “(1) No individual who, in the year prior to separa-  
25 tion from service as an officer or employee of the Govern-



1 ment or an officer of the uniformed services in a covered  
2 position, participated personally and substantially in ac-  
3 quisition functions related to a contract, subcontract, or  
4 claim of \$500,000 or more and—

5           “(A) engaged in repeated direct contact with  
6 the contractor or subcontractor on matters relating  
7 to such contract, subcontract, or claim; or

8           “(B) exercised significant ongoing decisionmak-  
9 ing responsibility with respect to the contractor or  
10 subcontractor on matters relating to such contract,  
11 subcontract, or claim,

12 shall knowingly accept or continue employment with such  
13 contractor or subcontractor for a period of 1 year follow-  
14 ing the individual’s separation from service, except that  
15 such individual may accept or continue employment with  
16 any division or affiliate of such contractor or subcontrac-  
17 tor that does not produce the same or similar products  
18 as the entity involved in the negotiation or performance  
19 of the contract or subcontract or the adjustment of the  
20 claim.

21           “(2) No contractor or subcontractor, or any officer,  
22 employee, agent, or consultant of such contractor or sub-  
23 contractor shall knowingly offer, provide, or continue any  
24 employment for another person, if such contractor, sub-  
25 contractor, officer, employee, agent, or consultant knows

1 or should know that the acceptance of such employment  
2 is or would be in violation of paragraph (1).

3 “(3) The head of each Federal agency shall designate  
4 in writing as a ‘covered position’ under this section each  
5 of the following positions in that agency:

6 “(A) The position of source selection authority,  
7 member of a source selection evaluation board, or  
8 chief of a financial or technical evaluation team, or  
9 any other position, if the officer or employee in that  
10 position is likely personally to exercise substantial  
11 responsibility for ongoing discretionary functions in  
12 the evaluation of proposals or the selection of a  
13 source for a contract in excess of \$500,000.

14 “(B) The position of procuring contracting offi-  
15 cer, or any other position, if the officer or employee  
16 in that position is likely personally to exercise sub-  
17 stantial responsibility for ongoing discretionary func-  
18 tions in the negotiation of a contract in excess of  
19 \$500,000 or the negotiation or settlement of a claim  
20 in excess of \$500,000.

21 “(C) The position of program executive officer,  
22 program manager, or deputy program manager, or  
23 any other position, if the officer or employee in that  
24 position is likely personally to exercise similar sub-  
25 stantial responsibility for ongoing discretionary func-

1 tions in the management or administration of a con-  
2 tract in excess of \$500,000.

3 “(D) The position of administrative contracting  
4 officer, the position of an officer or employee as-  
5 signed on a permanent basis to a Government Plant  
6 Representative’s Office, the position of auditor, a  
7 quality assurance position, or any other position, if  
8 the officer or employee in that position is likely per-  
9 sonally to exercise substantial responsibility for on-  
10 going discretionary functions in the on-site oversight  
11 of a contractor’s operations with respect to a con-  
12 tract in excess of \$500,000.

13 “(E) A position in which the incumbent is likely  
14 personally to exercise substantial responsibility for  
15 ongoing discretionary functions in operational or de-  
16 velopmental testing activities involving repeated di-  
17 rect contact with a contractor regarding a contract  
18 in excess of \$500,000.”.

19 (d) DISCLOSURE OF PROPRIETARY OR SOURCE SE-  
20 LECTION INFORMATION TO UNAUTHORIZED PERSONS.—

21 Subsection (l) of such section is amended—

22 (1) by inserting “who are likely to be involved  
23 in contracts, modifications, or extensions in excess of  
24 \$25,000” in the first sentence after “its procure-  
25 ment officials”; and

1           (2) by striking out “(e)” each place it appears  
2           and inserting in each such place “(f)”.

3           (e) RULES OF CONSTRUCTION.—Subsection (n) of  
4 such section is amended to read as follows:

5           “(n) RULES OF CONSTRUCTION.—Nothing in this  
6 section shall be construed to—

7           “(1) authorize the withholding of any informa-  
8           tion from the Congress, any committee or sub-  
9           committee thereof, a Federal agency, any board of  
10          contract appeals of a Federal agency, the Comptrol-  
11          ler General, or an inspector general of a Federal  
12          agency;

13          “(2) restrict the disclosure of information to, or  
14          receipt of information by, any person or class of per-  
15          sons authorized, in accordance with applicable agen-  
16          cy regulations or procedures, to receive that infor-  
17          mation;

18          “(3) restrict a contractor from disclosing its  
19          own proprietary information or the recipient of in-  
20          formation so disclosed by a contractor from receiving  
21          such information; or

22          “(4) restrict the disclosure or receipt of infor-  
23          mation relating to a Federal agency procurement  
24          that has been canceled by the agency and that the



1 contracting officer concerned determines in writing  
2 is not likely to be resumed.”.

3 (f) TERM TO BE DEFINED IN REGULATIONS.—Sub-  
4 section (o)(2)(A) of such section is amended—

5 (1) by inserting “money, gratuity, or other” be-  
6 fore “thing of value’ ”; and

7 (2) by inserting before the semicolon “and such  
8 other exceptions as may be adopted on a Govern-  
9 mentwide basis under section 7353 of title 5, United  
10 States Code”.

11 (g) TERMS DEFINED IN LAW.—Subsection (p) of  
12 such section is amended—

13 (1) in paragraph (1) by striking out “clauses  
14 (i)–(viii)” and inserting in lieu thereof “clauses (i)  
15 through (vii)”;

16 (2) in paragraph (3)—

17 (A) in subparagraph (A)—

18 (i) by striking out clause (i);

19 (ii) by redesignating clauses (ii), (iii),  
20 (iv), (v), (vi), (vii), and (viii) as clauses (i),  
21 (ii), (iii), (iv), (v), (vi), and (vii), respec-  
22 tively; and

23 (iii) in clause (i) (as redesignated by  
24 subclause (II) of this clause), by striking  
25 out “review and approval of a specifica-

1           tion” and inserting in lieu thereof “ap-  
 2           proval or issuance of a specification, acqui-  
 3           sition plan, procurement request, or req-  
 4           uisition”; and

5           (B) in subparagraph (B), by striking out  
 6           all after “includes” and inserting in lieu thereof  
 7           the following: “any individual acting on behalf  
 8           of, or providing advice to, the agency with re-  
 9           spect to any phase of the agency procurement  
 10          concerned, regardless of whether such individ-  
 11          ual is a consultant, expert, or advisor, or an of-  
 12          ficer or employee of a contractor or subcontrac-  
 13          tor (other than a competing contractor).”; and  
 14          (3) in paragraph (6)(A), by inserting  
 15          “nonpublic” before “information”.

16 **SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES**  
 17 **CODE.**

18          Section 208(a) of title 18, United States Code, is  
 19 amended—

20           (1) by inserting “(1)” before “Except as per-  
 21          mitted”; and

22           (2) by adding at the end the following new  
 23          paragraph:

24          “(2) Whoever knowingly aids, abets, counsels, com-  
 25          mands, induces, or procures conduct prohibited by this

1 section shall be subject to the penalties set forth in section  
2 216 of this title.”.

3 **SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

4 (a) REPEAL.—The following provisions of law are re-  
5 pealed:

6 (1) Sections 2207, 2397, 2397a, 2397b, 2397c,  
7 and 2408 of title 10, United States Code.

8 (2) Section 281 of title 18, United States Code.

9 (3) Section 801 of title 37, United States Code.

10 (4) Part A of title VI of the Department of En-  
11 ergy Organization Act (42 U.S.C. 7211 through  
12 7218).

13 (b) CLERICAL AMENDMENTS.—

14 (1) TITLE 10.—Part IV of subtitle A of title 10,  
15 United States Code, is amended—

16 (A) in the table of sections at the begin-  
17 ning of chapter 131, by striking out the item  
18 relating to section 2207; and

19 (B) in the table of sections for chapter  
20 141, by striking out the items relating to sec-  
21 tions 2397, 2397a, 2397b, 2397c, and 2408.

22 (2) TITLE 18.—The table of sections for chap-  
23 ter 15 of title 18, United States Code, is amended  
24 by striking out the item relating to section 281.

1           (3) TITLE 37.—The table of sections for chap-  
2       ter 15 of title 37, United States Code, is amended  
3       by striking out the item relating to section 801.

4           (4) DEPARTMENT OF ENERGY ORGANIZATION  
5       ACT.—The table of contents for the Department of  
6       Energy Organization Act is amended by striking out  
7       the matter relating to part A of title VI.

8   **SEC. 6004. IMPLEMENTATION.**

9       (a) REGULATIONS.—Not later than 180 days after  
10     the date of the enactment of this Act, regulations imple-  
11     menting the amendments made by this section to section  
12     27 of the Office of Federal Procurement Policy Act (41  
13     U.S.C. 423), including definitions of the terms used in  
14     subsection (f) of such section shall be issued in accordance  
15     with sections 6 and 25 of such Act (41 U.S.C. 405 and  
16     521) after coordination with the Director of the Office of  
17     Government Ethics.

18       (b) SAVINGS PROVISIONS.—

19           (1) CONTRACTOR CERTIFICATIONS.—No officer,  
20     employee, agent, representative, or consultant of a  
21     contractor who has signed a certification under sec-  
22     tion 27(e)(1)(B) of the Office of Federal Procure-  
23     ment Policy Act (41 U.S.C. 423(e)(1)(B)) before the  
24     effective date of this Act shall be required to sign a



new certification as a result of the enactment of this Act.

(2) FEDERAL PROCUREMENT OFFICIAL CERTIFICATIONS.—No procurement official of a Federal agency who has signed a certification under section 27(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(l)) before the date of enactment of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(c) INSPECTOR GENERAL REPORTS.—Not later than May 31 of each of the years 1994 through 1998, the Inspector General of each Federal agency (or, in the case of a Federal agency that does not have an Inspector General, the head of such agency) shall submit to Congress a report on the compliance by the agency during the preceding year with the requirement for the head of the agency to designate covered procurement positions under section 27(f)(3) of the Office of Federal Procurement Policy Act (as added by section 6001(c)).

## Subtitle B—Additional Amendments

### SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL.

(a) AMENDMENT OF OFPP ACT.—The Office of Federal Procurement Policy Act, as amended by section 1091,

1 is further amended by inserting after section 22 the fol-  
2 lowing new section 23:

3 “CONTRACTING FUNCTIONS PERFORMED BY FEDERAL  
4 PERSONNEL

5 “SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVI-  
6 SORY AND ASSISTANCE SERVICES.—(1) No person who is  
7 not an employee may be paid by an agency for services  
8 to conduct evaluations or analyses of any aspect of a pro-  
9 posal submitted for an acquisition unless employees with  
10 adequate training and capabilities to perform such evalua-  
11 tions and analyses are not readily available within the  
12 agency or any other Federal agency.

13 “(2) In the administration of this subsection, the  
14 head of each agency shall determine the standards of ade-  
15 quate training and capability of employees to conduct such  
16 acquisitions.

17 “(b) DELEGATION OF PROCUREMENT AUTHORITY.—  
18 With respect to an acquisition that is subject to section  
19 111 of the Federal Property and Administrative Services  
20 Act of 1949 (40 U.S.C. 759), the Administrator of Gen-  
21 eral Services may not issue a delegation of procurement  
22 authority for the acquisition unless the request for the del-  
23 egation of procurement authority includes a determination  
24 of the contracting agency that—

25 “(1) such agency has and will utilize employees  
26 within the agency, or employees available from an-

1 other agency, who are adequately trained and capa-  
2 ble of conducting evaluations and analyses of pro-  
3 posals submitted for such an acquisition; or

4 “(2)(A) such agency does not have employees  
5 within the agency who are adequately trained and  
6 capable of conducting evaluations and analyses of  
7 proposals submitted for such an acquisition; and

8 “(B) adequately trained and capable employees  
9 are not readily available from other agencies in ac-  
10 cordance with regulations promulgated by the Fed-  
11 eral Acquisition Regulatory Council.

12 “(c) DEFINITION.—For purposes of this section, the  
13 term ‘employee’ has the meaning given such term in sec-  
14 tion 2105 of title 5, United States Code.”.

15 (b) REQUIREMENT FOR GUIDANCE AND REGULA-  
16 TIONS.—

17 (1) GUIDANCE AND REGULATIONS REQUIRED.—

18 Not later than 90 days after the date of the enact-  
19 ment of this Act, the Federal Acquisition Regulatory  
20 Council established by section 25(a) of the Office of  
21 Federal Procurement Policy Act (41 U.S.C. 421(a))  
22 shall—

23 (A) review part 37 of title 48 of the Code  
24 of Federal Regulations as it relates to the use  
25 of advisory and assistance services; and

1 (B) provide guidance and promulgate regu-  
2 lations regarding—

3 (i) what actions Federal agencies are  
4 required to take to determine whether ex-  
5 pertise is readily available within the Fed-  
6 eral Government before contracting for ad-  
7 visory and technical services to conduct ac-  
8 quisitions; and

9 (ii) the manner in which Federal em-  
10 ployees with expertise may be shared with  
11 agencies needing expertise for such acquisi-  
12 tions.

13 (2) DEFINITION.—In paragraph (1), the term  
14 “employee” has the meaning given such term in sec-  
15 tion 2105 of title 5, United States Code.

16 **SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR**  
17 **STUDY AND REPORT.**

18 Section 17 of the Office of Federal Procurement Pol-  
19 icy Act (41 U.S.C. 415) is repealed.

20 **SEC. 6053. WAITING PERIOD FOR SIGNIFICANT CHANGES**  
21 **PROPOSED FOR ACQUISITION REGULATIONS.**

22 Section 22(a) of the Office of Federal Procurement  
23 Policy Act (41 U.S.C. 418b) is amended—

24 (1) by striking out “30 days” and inserting in  
25 lieu thereof “60 days”; and



(2) by adding at the end the following: “Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date.”.

## **TITLE VII—DEFENSE TRADE AND COOPERATION**

### **SEC. 7001. PURCHASES OF FOREIGN GOODS.**

#### **(a) REPEAL OF EXECUTED REQUIREMENTS.—**

##### **(1) BUY AMERICAN PROVISIONS.—**

(A) REQUIREMENT FOR POLICY GUIDANCE.—Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the “Buy American Act”, is amended in section 4(g) (41 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C) and (3).

(B) REPORTING REQUIREMENT.—Section 9096(b) of Public Law 102–396 (106 Stat. 1924; 41 U.S.C. 10b–2(b)) is repealed.

(2) STUDIES OF BUY AMERICAN ACT WAIVERS.—Section 306 of the Trade Agreements Act of 1970 (19 U.S.C. 2516), relating to studies of certain

1 employment effects and procurement effects of a  
2 waiver of title III of the Act of March 3, 1933 (41  
3 U.S.C. 10a et seq.), commonly referred to as the  
4 “Buy American Act”, is repealed.

5 (b) REPEAL OF REDUNDANT PROVISION.—Section  
6 2327 of title 10, United States Code, is repealed.

7 **SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.**

8 (a) DEFENSE INTERNATIONAL AGREEMENTS.—

9 (1) TERMINOLOGY REVISIONS.—Section 2531  
10 of title 10, United States Code, is amended—

11 (A) in the subsection captions for sub-  
12 sections (a) and (c), by striking out “MOUs  
13 AND RELATED” and inserting in lieu thereof  
14 “INTERNATIONAL”;

15 (B) in subsection (a), by striking out “pro-  
16 posed memorandum of understanding, or any  
17 existing or proposed agreement related to a  
18 memorandum of understanding,” in the matter  
19 above paragraph (1) and inserting in lieu there-  
20 of “proposed international agreement, including  
21 a memorandum of understanding,”;

22 (C) by striking out “memorandum of un-  
23 derstanding or related agreement” each place it  
24 appears and inserting in lieu thereof “inter-  
25 national agreement”;

(D) in subsection (b), by striking out “memorandum or related agreement” each place it appears in the second sentence and inserting in lieu thereof “international agreement”; and

(E) in subsection (c)—

(i) by striking out “A” after “AGREEMENTS.—” and inserting in lieu thereof “An”; and

(ii) by striking out “memorandum or agreement” and inserting in lieu thereof “international agreement”.

(2) EXPANDED SCOPE OF AGREEMENTS.—Section 2531(a) of title 10, United States Code, is amended by striking out “research, development, or production” in the matter above paragraph (1) and inserting in lieu thereof “research, development, production, or logistics support”.

(3) CLERICAL AMENDMENTS.—

(A) SECTION HEADING.—The heading of section 2531 of title 10, United States Code, is amended to read as follows:

**“§ 2531. Defense international agreements”.**

(B) TABLE OF SECTIONS.—The item relating to such section in the table of sections at

1           the beginning of subchapter V of chapter 148  
2           of such title is amended to read as follows:

“2531. Defense international agreements.”.

3           (b) REPEAL OF UNNECESSARY AUTHORITY.—

4           (1) REPEAL.—Section 7344 of title 10, United  
5           States Code, is repealed.

6           (2) CLERICAL AMENDMENT.—The table of sec-  
7           tions at the beginning of chapter 635 of such title  
8           is amended by striking out the item relating to sec-  
9           tion 7344.

10   **SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS,**  
11                                   **AND STANDARDIZATION.**

12           (a) LIMITED WAIVER OF RESTRICTIONS ON AC-  
13           CRUED REIMBURSABLE LIABILITIES AND CREDITS FOR  
14           CONTINGENCY OPERATIONS.—Section 2347 of title 10,  
15           United States Code, is amended by adding at the end the  
16           following new subsection:

17           “(c) The Secretary of Defense may waive the restric-  
18           tions in subsections (a) and (b) for a period not to exceed  
19           180 days upon a written determination that the armed  
20           forces are involved in a contingency operation or that in-  
21           volvement of the armed forces in a contingency operation  
22           is imminent. Upon making such a determination, the Sec-  
23           retary shall transmit a copy of the determination to the  
24           Committees on Armed Services of the Senate and House  
25           of Representatives.”.



1 (b) COMMUNICATIONS SUPPORT.—Section 2350f of  
2 title 10, United States Code, is amended—

3 (1) by redesignating subsection (d) as sub-  
4 section (e); and

5 (2) by inserting after subsection (c) the follow-  
6 ing new subsection:

7 “(d)(1) Nothing in this section shall be construed to  
8 limit the authority of the Secretary of Defense, without  
9 a formal bilateral agreement or multilateral arrangement,  
10 to furnish communications support and related supplies  
11 to, or receive communications support and related supplies  
12 from, an allied country in accordance with this subsection.

13 “(2) The Secretary of Defense may furnish or receive  
14 such support and supplies on a reciprocal basis for a pe-  
15 riod not to exceed 90 days—

16 “(A) in order to meet emerging operational re-  
17 quirements of the United States and the allied coun-  
18 try; or

19 “(B) incident to a joint military exercise with  
20 the allied country.

21 “(3) If interconnection of communication circuits is  
22 maintained for joint or multilateral defense purposes  
23 under the authority of this subsection, the costs of main-  
24 taining such circuits may be allocated among the various  
25 users.”.

# 1 **TITLE VIII—COMMERCIAL ITEMS**

## 2 **SEC. 8001. DEFINITIONS.**

3 Section 4 of the Office of Federal Procurement Policy  
4 Act (41 U.S.C. 403), as amended by section 4001(a), is  
5 further amended—

6 (1) by striking out “Act—”and inserting in lieu  
7 thereof “Act.”;

8 (2) by capitalizing the initial letter in the first  
9 word of each paragraph;

10 (3) by striking out the semicolon at the end of  
11 each of paragraphs (1), (2), (3), (5), (6), (7), (8),  
12 and (9) and inserting in lieu thereof a period;

13 (4) in paragraphs (4) and (10), by striking out  
14 “; and” at the end and inserting in lieu thereof a  
15 period; and

16 (5) by adding at the end the following new  
17 paragraphs:

18 “(12) The term ‘commercial item’ means—

19 “(A) property, other than real property,  
20 that is of a type regularly used by the general  
21 public or by nongovernmental entities in the  
22 course of normal business operations for pur-  
23 poses other than governmental purposes and—

24 “(i) has been sold or licensed to the  
25 general public;

1           “(ii) has not been sold or licensed to  
2           the general public but has been offered for  
3           sale or license to the general public; or

4           “(iii) is not yet available in the com-  
5           mercial marketplace but will be made  
6           available for commercial delivery within a  
7           reasonable period;

8           “(B) any item that, but for minor modi-  
9           fications made to meet Federal Government re-  
10          quirements or modifications of a type customar-  
11          ily available in the commercial marketplace,  
12          would satisfy the criteria in subparagraph (A);

13          “(C) any combination of items meeting the  
14          requirements of subparagraph (A) or (B) that  
15          are of a type customarily combined and sold in  
16          combination to the general public; and

17          “(D) installation services, maintenance  
18          services, repair services, training services, and  
19          other services if such services are procured for  
20          support of an item referred to in subparagraph  
21          (A), (B), or (C) and if the source of such  
22          services—

23                 “(i) offers such services to the general  
24                 public and the Federal Government con-

1                   temporarily and under similar terms  
2                   and conditions; and

3                   “(ii) offers to use the same work force  
4                   for providing the Federal Government with  
5                   such services as the source uses for provid-  
6                   ing such services to the general public.

7                   “(13) The term ‘nondevelopmental item’  
8                   means—

9                   “(A) any commercial item;

10                  “(B) any previously developed item of sup-  
11                  ply that is in use by a department or agency of  
12                  the United States, a State or local government,  
13                  or a foreign government with which the United  
14                  States has a mutual defense cooperation agree-  
15                  ment;

16                  “(C) any item of supply described in sub-  
17                  paragraph (A) or (B) that requires only minor  
18                  modification of the type normally available in  
19                  the commercial marketplace in order to meet  
20                  the requirements of the procuring department  
21                  or agency; or

22                  “(D) any item of supply currently being  
23                  produced that does not meet the requirements  
24                  of subparagraph (A), (B), or (C) solely because  
25                  the item—



“(i) is not yet in use; or

“(ii) is not yet available in the commercial marketplace.

“(14) The term ‘component’ means any item supplied to the Federal Government as part of an end item or of another component.

“(15) The term ‘commercial component’ means any component that is a commercial item.”.

**SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS.**

(a) PREFERENCE REQUIRED.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4021, is further amended by adding at the end the following new section:

**“PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS**

**“SEC. 31. (a) PREFERENCE.—**The head of each executive agency shall ensure that, to the maximum extent practicable—

**“(1) requirements of the executive agency with respect to a procurement of supplies are stated in terms of—**

**“(A) functions to be performed;**

**“(B) performance required; or**

**“(C) essential physical characteristics;**

1           “(2) such requirements are defined so that  
2       commercial items or other nondevelopmental items  
3       may be procured to fulfill such requirements; and

4           “(3) such requirements are fulfilled through the  
5       procurement of commercial items or other  
6       nondevelopmental items.

7       “(b) IMPLEMENTATION.—The head of each executive  
8       agency shall ensure that procurement officials in that ex-  
9       ecutive agency, to the maximum extent practicable—

10           “(1) acquire commercial items or other  
11       nondevelopmental items to meet the needs of the ex-  
12       ecutive agency;

13           “(2) require prime contractors and subcontrac-  
14       tors at all levels under the executive agency con-  
15       tracts to incorporate commercial items or other  
16       nondevelopmental items as components of items sup-  
17       plied to the executive agency;

18           “(3) modify requirements in appropriate cases  
19       to ensure that the requirements can be met by com-  
20       mercial items or other nondevelopmental items;

21           “(4) state specifications in terms that enable  
22       and encourage bidders and offerors to supply com-  
23       mercial items or other nondevelopmental items in re-  
24       sponse to the executive agency solicitations;

1 “(5) revise the executive agency’s procurement  
2 policies, practices, and procedures not required by  
3 law to reduce any impediments in those policies,  
4 practices, and procedures to the acquisition of com-  
5 mercial items and other nondevelopmental items;  
6 and

7 “(6) require training of appropriate personnel  
8 in the acquisition of commercial items and other  
9 nondevelopmental items.

10 “(c) PRELIMINARY MARKET RESEARCH.—(1) The  
11 head of an executive agency shall conduct market research  
12 appropriate to the circumstances—

13 “(A) before developing new specifications for a  
14 procurement by that executive agency; and

15 “(B) before soliciting bids or proposals for a  
16 contract in excess of the simplified acquisition  
17 threshold.

18 “(2) The head of an executive agency shall use the  
19 results of market research to determine whether there are  
20 commercial items or other nondevelopmental items avail-  
21 able that—

22 “(A) meet the executive agency’s requirements;

23 “(B) could be modified to meet the executive  
24 agency’s requirements; or

1           “(C) could meet the executive agency’s require-  
2       ments if those requirements were modified to a rea-  
3       sonable extent.”.

4       (b) REPEAL OF SUPERSEDED PROVISION.—

5           (1) SEPARATE STATEMENT OF PREFERENCE  
6       FOR DEPARTMENT OF DEFENSE.—Section 2325 of  
7       title 10, United States Code, is repealed.

8           (2) CLERICAL AMENDMENT.—The table of sec-  
9       tions at the beginning of chapter 137 of such title  
10      is amended by striking out the item relating to sec-  
11      tion 2325.

12   **SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.**

13       (a) REQUIRED FAR PROVISIONS.—The Office of  
14      Federal Procurement Policy Act (41 U.S.C. 401 et seq.),  
15      as amended by section 8002, is further amended by adding  
16      at the end the following:

17   “FEDERAL ACQUISITION REGULATION PROVISIONS RE-  
18      GARDING ACQUISITIONS OF COMMERCIAL ITEMS AND  
19      COMPONENTS

20       “SEC. 32. (a) CONTRACT CLAUSES AND OTHER  
21      CLAUSES.—(1)(A) The Federal Acquisition Regulation  
22      shall include one or more sets of contract clauses contain-  
23      ing the terms and conditions for the acquisition of com-  
24      mercial items and commercial components by executive  
25      agencies and by contractors in the performance of con-  
26      tracts of executive agencies.



1       “(B) The contract clauses referred to in subpara-  
2 graph (A) shall include only—

3           “(i) those clauses that are required to imple-  
4 ment provisions of law applicable to acquisitions of  
5 commercial items or commercial components, as the  
6 case may be;

7           “(ii) those contract clauses that are essential  
8 for the protection of the Federal Government’s inter-  
9 est in an acquisition of commercial items or commer-  
10 cial components, as the case may be; and

11          “(iii) those contract clauses that are determined  
12 to be consistent with standard commercial practice  
13 and appropriate to be included in a contract or sub-  
14 contract for commercial items or commercial compo-  
15 nents, as the case may be.

16       “(2) Subject to paragraph (3), the Federal Acquisi-  
17 tion Regulation shall require that, to the maximum extent  
18 practicable, only the contract clauses referred to in para-  
19 graph (1) be used in a contract or subcontract for the  
20 acquisition of commercial items or commercial components  
21 by or for an executive agency.

22       “(3) The Federal Acquisition Regulation shall pro-  
23 vide that a contract or subcontract referred to in para-  
24 graph (2) may contain contract clauses other than the  
25 contract clauses referred to in that paragraph only if the

1 other clauses are essential for the protection of the Fed-  
2 eral Government's interest in—

3 “(A) that contract or subcontract, as deter-  
4 mined in writing by the contracting officer for such  
5 contract; or

6 “(B) a class of contracts or subcontracts, as de-  
7 termined by the head of an agency concerned, unless  
8 the determination of that head of an agency is dis-  
9 approved by the Administrator.

10 “(4) The Federal Acquisition Regulation shall pro-  
11 vide standards and procedures for waiving the use of con-  
12 tract clauses required pursuant to paragraph (1), other  
13 than those required by law, including standards for deter-  
14 mining the cases in which a waiver is appropriate.

15 “(b) MARKET ACCEPTANCE.—The Federal Acquisi-  
16 tion Regulation shall include a requirement for the head  
17 of an executive agency, when determined appropriate in  
18 accordance with criteria set out in the regulation, to re-  
19 quire offerors for a contract to demonstrate in the offer  
20 that the items offered—

21 “(1) have either—

22 “(A) achieved a level of commercial market  
23 acceptance necessary to indicate that the items  
24 are suitable for the executive agency's use; or

“(B) been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

“(2) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

“(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The Federal Acquisition Regulation shall include a requirement that firm, fixed price contracts be used, to the maximum extent practicable, for the acquisition of commercial items.

“(d) CONTRACT QUALITY REQUIREMENTS.—The Federal Acquisition Regulation shall include provisions that—

“(1) permit, to the maximum extent practicable, a contractor under a commercial items acquisition to use the contractor’s existing quality assurance system as a substitute for compliance with a requirement for the Federal Government to inspect or test the commercial items before the contractor’s tender of those items for acceptance by the Federal Government;

“(2) require that, to the maximum extent practicable, an executive agency take advantage of warranties (including extended warranties) offered by

1 offerors of commercial items and use such warran-  
2 ties for the repair and replacement of commercial  
3 items; and

4 “(3) set forth guidance to executive agencies re-  
5 garding the use of past performance of items and  
6 sources as a factor in contract award decisions.”.

7 (b) DEFENSE CONTRACT CLAUSES.—

8 (1) REPEAL OF DOD AUTHORITY.—Section  
9 824(b) of the National Defense Authorization Act  
10 for Fiscal Years 1990 and 1991 (Public Law 101–  
11 189; 10 U.S.C. 2325 note) is repealed.

12 (2) SAVINGS PROVISION.—Notwithstanding sec-  
13 tion 32(a) of the Office of Federal Procurement Pol-  
14 icy Act (as added by subsection (a)), contracts of the  
15 Department of Defense entered into before October  
16 1, 1994, and subcontracts entered into before such  
17 date under such contracts, may include clauses de-  
18 veloped pursuant to paragraphs (2) and (3) of sec-  
19 tion 824(b) of the National Defense Authorization  
20 Act for Fiscal Years 1990 and 1991 (Public Law  
21 101–189; 10 U.S.C. 2325 note).



1   **SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN**  
2                   **LAWS.**

3       The Office of Federal Procurement Policy Act (41  
4 U.S.C. 401 et seq.), as amended by section 8003, is fur-  
5 ther amended by adding at the end the following:

6   “CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO  
7                   ACQUISITIONS OF COMMERCIAL ITEMS

8       “SEC. 33. (a) IN GENERAL.—(1) The applicability of  
9 a provision of law described in paragraph (2) to contracts  
10 for the acquisition of commercial items may be waived on  
11 a class basis in the Federal Acquisition Regulation. Such  
12 a waiver shall not apply to a provision of law that ex-  
13 pressly refers to this section and prohibits the waiver of  
14 that provision of law.

15       “(2) A provision of law referred to in paragraph (1)  
16 is any provision of law enacted after the date of the enact-  
17 ment of the Federal Acquisition Streamlining Act of 1993  
18 that, as determined by the Administrator for Federal Pro-  
19 curement Policy, sets forth policies, procedures, require-  
20 ments, or restrictions for the procurement of property or  
21 services by the Federal Government.

22       “(b) WAIVER OF APPLICABILITY TO SUB-  
23 CONTRACTS.—The applicability of a provision of law de-  
24 scribed in subsection (a)(2) to subcontracts under a con-  
25 tract for the acquisition of commercial items may be  
26 waived on a class basis in the Federal Acquisition Regula-

1 tion. Such a waiver shall not apply to a provision of law  
2 that expressly refers to this section and prohibits the waiv-  
3 er of that provision of law.”.

4 **SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF**  
5 **LAW.**

6 (a) **ARMED SERVICES ACQUISITIONS.**—

7 (1) **PROHIBITION ON CONTINGENT FEES.**—Sec-  
8 tion 2306(b) of title 10, United States Code, as  
9 amended by section 4031, is further amended by in-  
10 serting before the period at the end of the sentence  
11 added by section 4031 the following: “or to a con-  
12 tract for the acquisition of commercial items”.

13 (2) **REQUIREMENT TO IDENTIFY SUPPLIERS**  
14 **AND SOURCES OF SUPPLIES.**—Paragraph (2) of sec-  
15 tion 2384(b) of title 10, United States Code, is  
16 amended to read as follows:

17 “(2) The regulations prescribed pursuant to para-  
18 graph (1) do not apply to a contract that requires the de-  
19 livery of supplies that are commercial items, as defined  
20 in section 2302 of this title.”.

21 (3) **PROHIBITION AGAINST DOING BUSINESS**  
22 **WITH CERTAIN OFFERORS OR CONTRACTORS.**—Sec-  
23 tion 2393(d) of title 10, United States Code, as  
24 amended by section 4034, is further amended by  
25 adding at the end the following: “The requirement

1 shall not apply in the case of a subcontract for the  
2 acquisition of commercial items (as defined in sec-  
3 tion 4(12) of the Office of Federal Procurement Pol-  
4 icy Act (41 U.S.C. 403(12))).”.

5 (4) PROHIBITION ON LIMITATION OF SUB-  
6 CONTRACTOR DIRECT SALES.—Section 2402 of title  
7 10, United States Code, as amended by section  
8 4032, is further amended by adding at the end the  
9 following new subsection:

10 “(d)(1) An agreement between the contractor in a  
11 contract for the acquisition of commercial items and a  
12 subcontractor under such contract that restricts sales by  
13 such subcontractor directly to persons other than the con-  
14 tractor may not be considered to unreasonably restrict  
15 sales by that subcontractor to the United States in viola-  
16 tion of the provision included in such contract pursuant  
17 to subsection (a) if the agreement does not result in the  
18 Federal Government being treated differently with regard  
19 to the restriction than any other prospective purchaser of  
20 such commercial items from that subcontractor.

21 “(2) In paragraph (1), the term ‘commercial item’  
22 has the meaning given such term in section 4(12) of the  
23 Office of Federal Procurement Policy Act (41 U.S.C.  
24 403(12)).”.

1           (5) PREFERENCE FOR USE OF UNITED STATES  
2       VESSELS FOR TRANSPORTING SUPPLIES OF THE  
3       ARMED FORCES.—Section 2631 of title 10, United  
4       States Code, as amended by section 4036, is further  
5       amended by inserting before the period at the end  
6       of the sentence added by section 4036 the following:  
7       “or to a contract for the transportation of commer-  
8       cial items (as defined in section 4(12) of such Act  
9       (41 U.S.C. 403(12))).”.

10       (b) CIVILIAN AGENCY ACQUISITIONS.—

11           (1) RESTRICTIONS ON SUBCONTRACTOR SALES  
12       TO THE UNITED STATES.—Section 303G of the Fed-  
13       eral Property and Administrative Services Act of  
14       1949 (41 U.S.C. 253g), as amended by section  
15       4042, is further amended by adding at the end the  
16       following new subsection:

17       “(d) An agreement between the contractor in a con-  
18       tract for the acquisition of commercial items and a sub-  
19       contractor under such contract that restricts sales by such  
20       subcontractor directly to persons other than the contractor  
21       may not be considered to unreasonably restrict sales by  
22       that subcontractor to the United States in violation of the  
23       provision included in such contract pursuant to subsection  
24       (a) if the agreement does not result in the Federal Govern-  
25       ment being treated differently with regard to the restric-



1 tion than any other prospective purchaser of such commer-  
2 cial items from that subcontractor.”.

3 (2) PROHIBITION ON CONTINGENT FEES.—Sec-  
4 tion 304(a) of the Federal Property and Administra-  
5 tive Services Act of 1949 (41 U.S.C. 254(a)), as  
6 amended by section 4041, is further amended by in-  
7 serting before the period at the end of the sentence  
8 added by section 4041 the following: “or to a con-  
9 tract for the acquisition of commercial items”.

10 (c) ACQUISITIONS GENERALLY.—

11 (1) FEDERAL WATER POLLUTION CONTROL  
12 ACT.—Section 508 of the Federal Water Pollution  
13 Control Act (33 U.S.C. 1368) is amended by adding  
14 at the end the following new subsection:

15 “(f)(1) No certification by a contractor, and no con-  
16 tract clause, may be required in the case of a contract  
17 for the acquisition of commercial items in order to imple-  
18 ment a prohibition or requirement of this section or a pro-  
19 hibition or requirement issued in the implementation of  
20 this section.

21 “(2) In paragraph (1), the term ‘commercial item’  
22 has the meaning given such term in section 4(12) of the  
23 Office of Federal Procurement Policy Act (41 U.S.C.  
24 403(12)).”.

1           (2) CONTRACT WORK HOURS AND SAFETY  
2 STANDARDS ACT.—The Contract Work Hours and  
3 Safety Standards Act (title I of the Work Hours and  
4 Safety Act of 1962 (40 U.S.C. 327 et seq.)) is  
5 amended by adding at the end the following new sec-  
6 tion:

7       “SEC. 108. (a) No certification by a contractor, and  
8 no contract clause, may be required in the case of a con-  
9 tract for the acquisition of commercial items in order to  
10 implement a prohibition or requirement in this title.

11       “(b) In subsection (a), the term ‘commercial item’  
12 has the meaning given such term in section 4(12) of the  
13 Office of Federal Procurement Policy Act (41 U.S.C.  
14 403(12)).”.

15           (3) OFFICE OF FEDERAL PROCUREMENT POL-  
16 ICY ACT REQUIREMENT RELATING TO PROCUREMENT  
17 INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of  
18 the Office of Federal Procurement Policy Act (41  
19 U.S.C. 423) is amended by adding at the end the  
20 following new subparagraph:

21       “(C) This subsection does not apply to a contract for  
22 the acquisition of commercial items.”.

23           (4) CERTAIN PROVISIONS OF THE ANTI-KICK-  
24 BACK ACT OF 1986.—

1           (A) REQUIREMENT FOR CONTRACT  
2           CLAUSE.—Section 7 of the Anti-Kickback Act  
3           of 1986 (41 U.S.C. 57), as amended by section  
4           4052, is further amended by inserting before  
5           the period at the end of subsection (d) the fol-  
6           lowing: “or to a prime contract for the acquisi-  
7           tion of commercial items (as defined in section  
8           4(12) of such Act (41 U.S.C. 403(12))).”.

9           (B) INSPECTION AUTHORITY.—Section 8  
10          of such Act (41 U.S.C. 58) is amended by add-  
11          ing at the end the following: “This section does  
12          not apply with respect to a prime contract for  
13          the acquisition of commercial items (as defined  
14          in section 4(12) of the Office of Federal Pro-  
15          curement Policy Act (41 U.S.C. 403(12))).”.

16          (5) DRUG-FREE WORKPLACE ACT OF 1988.—  
17          The Drug-Free Workplace Act of 1988 (subtitle D  
18          of title V of Public Law 100–690; 41 U.S.C. 701 et  
19          seq.), as amended by section 4057, is further  
20          amended by inserting after the matter inserted by  
21          such section 4057 the following: “, other than a con-  
22          tract for the procurement of commercial items (as  
23          defined in section 4(12) of such Act (41 U.S.C.  
24          403(12))),”.

1           (6) CLEAN AIR ACT.—Section 306 of the Clean  
2       Air Act (42 U.S.C. 7606) is amended by adding at  
3       the end the following new subsection:

4       “(f)(1) No certification by a contractor, and no con-  
5       tract clause, may be required in the case of a contract  
6       for the acquisition of commercial items in order to imple-  
7       ment a prohibition or requirement of this section or a pro-  
8       hibition or requirement issued in the implementation of  
9       this section.

10       “(2) In paragraph (1), the term ‘commercial item’  
11       has the meaning given such term in section 4(12) of the  
12       Office of Federal Procurement Policy Act (41 U.S.C.  
13       403(12)).”.

14           (7) MERCHANT MARINE ACT, 1936.—Section  
15       901(b) of the Merchant Marine Act, 1936 (46  
16       U.S.C. 1241(b)), as amended by section 4058, is  
17       further amended by adding at the end the following  
18       new paragraph:

19       “(4)(A) Paragraph (1) does not apply to a contract  
20       for transportation of commercial items on ocean vessels.

21       “(B) In subparagraph (A), the term ‘commercial  
22       item’ has the meaning given such term in section 4(12)  
23       of the Office of Federal Procurement Policy Act (41  
24       U.S.C. 403(12)).”.



(8) FLY AMERICAN REQUIREMENTS.—Section 1117 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1517) is amended by adding at the end the following new subsection:

“(e)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.

“(2) In paragraph (1), the term ‘commercial item’ has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).”.

**SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OFFERS OF COMMERCIAL ITEMS.**

Section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) is amended by adding at the end the following new paragraph:

“(4) The requirements of paragraph (3)(B) do not apply to contracts for the purchase of commercial items. The Administrator shall prescribe for such contracts appropriate limits on the applicability of a deadline for submission of bids or proposals that is required by subsection (a)(1). Such limits shall be incorporated in the Federal Acquisition Regulation.”.

1   **SEC. 8007. ADVOCATE FOR ACQUISITION OF COMMERCIAL**  
2                                   **AND NONDEVELOPMENTAL ITEMS.**

3           (a) **ESTABLISHMENT.**—The Office of Federal Pro-  
4   curement Policy Act (41 U.S.C. 401 et seq.), as amended  
5   by section 8004, is further amended by adding at the end  
6   the following:

7           “**ADVOCATE FOR ACQUISITION OF COMMERCIAL AND**  
8                                   **NONDEVELOPMENTAL ITEMS**

9           “**SEC. 34. (a) ESTABLISHMENT.**—There is estab-  
10   lished in the Office of Federal Procurement Policy the po-  
11   sition of Advocate for Acquisition of Commercial and  
12   Nondevelopmental Items.

13          “(b) **FUNCTIONS.**—The Advocate for Acquisition of  
14   Commercial and Nondevelopmental Items shall—

15               “(1) monitor compliance by executive agencies  
16               with the preference for the acquisition of commercial  
17               and nondevelopmental items that is set forth in sec-  
18               tion 29;

19               “(2) make recommendations and proposals to  
20               the Administrator regarding the reform of procure-  
21               ment statutes and regulations to implement that  
22               preference; and

23               “(3) report to the Administrator on the pro-  
24               spective effect of proposed legislation and regula-  
25               tions on the acquisition of commercial items and  
26               nondevelopmental items.

“(c) REPORT.—The Administrator shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives an annual report describing for the year covered by the report all actions taken by the Office of Federal Procurement Policy to promote the acquisition of commercial items and other nondevelopmental items.”.

(b) RESPONSIBILITIES OF THE ADVOCATE FOR COMPETITION.—Section 20(c) of such Act (41 U.S.C. 418(c)) is amended to read as follows:

“(c) The advocate for competition for each procuring activity shall be responsible for promoting full and open competition, promoting the acquisition of commercial items and other nondevelopmental items, and challenging barriers to such acquisition, including such barriers as unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.”.

(c) REPEAL OF SUPERSEDED PROVISION.—Section 28 of such Act (41 U.S.C. 424) is repealed.

**SEC. 8008. PROVISIONS NOT AFFECTED.**

Nothing in this title shall be construed as amending, modifying, or superseding, or as intended to impair or restrict authorities or responsibilities under—

1           (1) section 111 of the Federal Property and  
2       Administrative Services Act of 1949 (40 U.S.C.  
3       759), popularly referred to as the “Brooks Auto-  
4       matic Data Processing Act”;

5           (2) title IX of the Federal Property and Admin-  
6       istrative Services Act of 1949 (40 U.S.C. 541 et  
7       seq.), popularly referred to as the “Brooks Archi-  
8       tect-Engineers Act”;

9           (3) section 8(a) of the Small Business Act (15  
10      U.S.C. 637(a)) or any other provision of that Act;  
11      or

12          (4) the Act of June 25, 1938 (41 U.S.C. 46-  
13      48c), that was revised and reenacted in the Act of  
14      June 23, 1971 (85 Stat. 77), popularly referred to  
15      as the “Javits-Wagner-O’Day Act”.

16 **SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL**  
17 **GOVERNMENT USE OF MARKET RESEARCH.**

18      (a) **REPORT REQUIRED.**—Not later than 2 years  
19 after the date of the enactment of this Act, the Comptrol-  
20 ler General of the United States shall submit to the Con-  
21 gress a report on the use of market research by the Fed-  
22 eral Government in support of the procurement of com-  
23 mercial items and nondevelopmental items.

24      (b) **CONTENT OF REPORT.**—The report shall include  
25 the following:



1           (1) A review of existing Federal Government  
2     market research efforts to gather data concerning  
3     commercial and other nondevelopmental items.

4           (2) A review of the feasibility of creating a Gov-  
5     ernment-wide data base for storing, retrieving, and  
6     analyzing market data, including use of existing  
7     Federal Government resources.

8           (3) Any recommendations for changes in law or  
9     regulations that the Comptroller General considers  
10    appropriate.

## 11    **TITLE IX—EFFECTIVE DATE**

### 12   **SEC. 9001. EFFECTIVE DATE.**

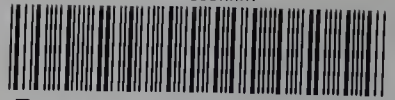
13       Except as otherwise provided in this Act, this Act and  
14    the amendments made by this Act shall take effect on the  
15    date of the enactment of this Act.

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